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(NOTE: Unless provided to the Court Reporter, all proper nouns are rendered to the best phonetic approximation.)

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1 This cause came on for hearing on the 30th day of
2 May, 2018, in the United States District Court for the
3 Eastern District of Tennessee, Northern Division, before the
4 Honorable J. Ronnie Greer, presiding.

5 The Court having duly opened, the following
6 proceedings were had, to wit:

7 THE COURT: Ms. Cassanego, would you call the next
8 case, please.

9 THE COURTROOM DEPUTY: Yes, Your Honor. Criminal
10 action 2:17-CR-12, United States of America versus Jonathan
11 Andy Logan Dishner.

12 THE COURT: All right. Mr. Dishner has filed a
13 Motion in this case seeking to withdraw his guilty plea and
14 proceed to trial in the case.

15 The Motion has been briefed by both Parties and
16 the purpose of today's hearing is to allow any evidence that
17 might need to be heard by the Court to be introduced.

18 Mr. Fabus, how many witnesses do you intend to
19 call?

20 MR. FABUS: I wasn't sure how you would proceed on
21 that. Is there not going to be any oral argument? This is
22 just an evidentiary hearing?

23 THE COURT: Well, I want to hear everything there
24 is to hear before I hear oral argument.

25 MR. FABUS: Okay. I wasn't sure how you would

1 proceed. If you would just question him yourself -- I
2 didn't necessarily want to put him on the stand myself and
3 then allow him to be subject to cross by Mr. Bowman.

4 I wasn't sure. I have never had a hearing like
5 this before. I thought you just might question him
6 yourself.

7 THE COURT: well, the burden is on him to prove
8 his entitlement to withdraw the Motion. I guess I will
9 leave it to you and Mr. Dishner how you proceed with that.

10 MR. FABUS: He will take the stand, Your Honor.

11 THE COURT: All right, Mr. Dishner, come around
12 and be sworn.

13 THE COURTROOM DEPUTY: If you will please raise
14 your right hand. Do you solemnly swear that you will true
15 answer make to all questions asked you at this present
16 inquiry as shall you answer under God? If so, please I do.

17 THE WITNESS: I do.

18 THE COURTROOM DEPUTY: Please be seated.

19 THE COURT: All right, Mr. Fabus, you may go
20 forward.

21 JONATHAN ANDY LOGAN DISHNER,
22 the first witness, having been duly sworn,
23 was called on behalf of the Defendant,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. FABUS:

2 Q Would you state your name for the Judge.

3 A John Dishner.

4 Q Mr. Dishner, you understand why we are here today;
5 correct?

6 A Yes, sir.

7 Q You are asking the Court to allow you to set your
8 guilty plea aside and let you proceed to trial?

9 A Yes, sir.

10 Q Can you explain to the Court why you want the Court to
11 set your guilty plea aside?

12 A On November the 17th we had a hearing. I had a
13 different lawyer, David Leonard. At the time -- about a
14 week before the hearing, I asked him -- well, about a couple
15 of months before, I asked to go to trial and every time I
16 asked him to go to trial, he kind of like veered off from
17 it.

18 So on the 17th, we come to Court, and he explained to
19 the Judge that he was wanting to come off my case, due to me
20 wanting to go to trial.

21 Q Let me backtrack a bit. Prior to that, your change of
22 Plea Hearing was November the 17th, and at that point in
23 time, there was a Motion filed where you were asking for a
24 new attorney at that point in time. Had there been a Motion
25 filed once before where you were asking for a new attorney?

1 A I believe so. But this Motion here Mr. Leonard filed
2 himself because I wanted to go to trial.

3 Q Okay. Let me make sure I've got my dates right. Do
4 you remember going to Court on September the 6th of 2017? I
5 think you wouldn't have been in front of this Judge, you
6 would have been in front of Judge Corker.

7 A I believe so.

8 Q You had filed asking for a new attorney and then you
9 got in front of the Judge and you withdrew it?

10 A Yes, sir. Mr. Corker said that I had a good lawyer,
11 that me and him needed to get along. So I agreed and I just
12 dismissed the Motion.

13 Q Okay. You voluntarily withdrew it; right?

14 A Yes, sir.

15 Q Okay. Sometime thereafter was when you signed the plea
16 agreement; right? Do you remember about how long it was
17 after that hearing you signed the plea agreement?

18 A It might have been a couple months, I think.

19 Q If the Court records reflect about six weeks; does that
20 sound about right?

21 A Yeah. Yeah. That sounds about right. I talked to
22 Mr. Leonard and explained to him that I was really wanting
23 to go to trial and I didn't want to take the plea bargain.
24 About a week before the hearing, he came and spoke to me
25 and he explained that he wasn't going to trial with me,

1 that he filed a Motion to come off my case.

2 Q Okay. But at some point you did sign the plea
3 agreement and it got filed; right?

4 A Yes. Yes, sir.

5 Q So when Mr. Leonard came and told you he was filing a
6 Motion to withdraw from your case, that was after you had
7 already signed the plea agreement?

8 A Yes. After I signed the plea agreement, I had my
9 family call him, and had him come back to the jail so I
10 could speak with him. And that is when me and him got in a
11 disagreement, because he felt that I should take the plea
12 bargain. I didn't want to take the plea bargain. So he
13 filed a Motion to come off my case on the 17th of November.

14 Q You showed up here November the 17th and I got you
15 the transcript from that hearing; right?

16 A Yes, sir.

17 Q You were in front of this Judge that you are sitting
18 right beside; right?

19 A Yes, sir.

20 Q Now, in that transcript Mr. Greer -- Judge Greer -- I'm
21 sorry -- asked you multiple times -- he told you multiple
22 times that you did not have to take the plea. That you
23 could get out of it and you could still go to trial. He
24 asked you that multiple times that day; right?

25 A Yes, sir.

1 Q Okay. So why didn't you tell him yes, that you wanted
2 to go to trial?

3 A I was -- I think I was more confused and -- where my
4 lawyer was trying to come off my case. We'd already had the
5 argument. Mr. Greer said he wasn't going to take him off my
6 case and that I would have to go to trial with him.

7 Q Do you remember when the trial was set for?

8 A November -- December the 5th.

9 Q So it was less than three weeks away from your change
10 of Plea Hearing?

11 A Yes, sir.

12 Q Do you remember that day ever telling the Judge you
13 were just ready to get it over with?

14 A I believe I did. I was upset because of some of the
15 things Mr. Leonard had said.

16 Q Doesn't the transcript actually reflect that you said
17 that on two different occasions? "I am just ready to get it
18 over with."

19 A Yes, sir.

20 Q Okay. But even when you said that, the Judge
21 stopped -- interrupted you and wanted to make sure that you
22 knew what you were doing and that it was voluntary; right?

23 A He did.

24 Q Are you here today maintaining your innocence?

25 A No. I am not maintaining my innocence. I am just

1 wanting to have my right to a trial and maintain my right
2 for a trial.

3 Q Okay. So after the November 17th hearing, when did
4 you first tell Mr. Leonard that you wanted to go to trial
5 again?

6 A I think I might have been in Salem for 33 days, maybe
7 35 days, I started thinking back on what was said at the
8 hearing, and I called him and told him that I felt like we
9 should try to part ways and I should get another lawyer, and
10 that I wanted to pull my plea back.

11 Q Okay. So it was about a month after the hearing?

12 A I believe so, sir.

13 Q Okay. And then did you file a Motion or did
14 Mr. Leonard file the Motion?

15 A I filed the Motion, sir. I sent him a letter to file
16 the Motion, I think.

17 Q Okay.

18 A I think I did, yeah.

19 Q Were you concerned about going to trial with your
20 attorney when your hearing was only about three weeks -- the
21 trial was only about three weeks away?

22 A Yeah, I was concerned about that. But my real -- my
23 main concern was what was said at my hearing.

24 Q What specifically did he say that sits with you like
25 that -- that bugs you?

1 A I believe in -- around about -- that me and him
2 couldn't get along. And that he felt like we was going to
3 put hands on each other or fist fight -- something like
4 around that demeanor. And some where on into the hearing he
5 explained to Mr. Greer that if -- well, Mr. Greer told him
6 that he wouldn't take him off my case and we just needed to
7 get along.

8 So that is when he asked me if I was going to take a
9 plea and I said yes. And Mr. Leonard said that he didn't
10 have a problem representing me other than -- it seemed like
11 he said I was going to lie if I went to trial and got on the
12 stand. I am not for sure that is what was said, but --

13 MR. FABUS: Judge, if I can interrupt for a
14 second. It just dawned on me.

15 Have you never even had a chance -- you haven't
16 been able to -- they haven't been able to see -- I am
17 referencing stuff that happened in that sealed portion of
18 that hearing.

19 Out of fairness to the Government, shouldn't they
20 be able to see that transcript?

21 THE COURT: They should. I was not aware that
22 they couldn't. When was that --

23 MR. BOWMAN: I noted that in my response, Judge.
24 That portion of the transcript was --

25 THE COURT: Oh, that was the ex parte portion --

1 MR. BOWMAN: Yes, sir.

2 THE COURT: -- of the hearing, that is what you
3 are talking about?

4 MR. BOWMAN: That was never released to the United
5 States.

6 MR. FABUS: With us referencing it -- I guess I
7 wanted to bring that to your attention however you rule on
8 that. Because that was one of the most concerning things I
9 was raising was Mr. Leonard actually represented to the
10 Court, "If I continue representing him, we may end up in a
11 fist fight."

12 THE COURT: Well, my concern about those kinds of
13 hearings is that it will disclose things to the Government
14 that should not be disclosed.

15 If you and Mr. Dishner have no objection to that
16 transcript being available the Government, I will certainly
17 permit the Government to see it. Otherwise, I will need to
18 review it, I suppose.

19 MR. FABUS: Okay. I guess I probably will need to
20 double check it. I did just want to raise that issue.

21 THE COURT: One of the things I would be concerned
22 about, of course even at this point, is that if Mr. Dishner
23 is successful in withdrawing his guilty plea and goes to
24 trial, I would not want any confidences to be disclosed to
25 the Government or any trial strategy to be disclosed to the

1 Government.

2 MR. FABUS: Okay. I understand. I was just
3 trying to be fair. I hadn't thought that through all the
4 way.

5 BY MR. FABUS:

6 Q Since I've been on your case have you wavered at all
7 about whether you wanted to go to trial or set this aside --
8 or take the plea, I mean?

9 A No. I haven't wavered. That's why --

10 Q That's actually why things were probably contentious
11 with us early on?

12 A Yeah. I think that's why me and you was kind of -- we
13 had a little bit of a -- I felt like you was trying to get
14 me to take it too, but I see now that we was just -- I was
15 looking at it in a different light.

16 Q Okay. But you've maintained that you wanted to go to
17 trial all these last couple of months?

18 A Yeah, this whole time I have maintained that I would
19 like to go to trial.

20 MR. FABUS: Okay. I will pass the witness, Judge.

21 THE COURT: All right. Mr. Bowman, cross examine?

22 CROSS EXAMINATION

23 BY MR. BOWMAN:

24 Q Mr. Dishner, you were asked about a Motion that you
25 filed requesting -- back in September of 2017 -- that

1 Mr. Leonard be relieved from representing you and that you
2 receive a new lawyer?

3 A Yes, sir.

4 Q Okay. And in fact, one of the things that you
5 mentioned at that time that concerned you about
6 Mr. Leonard's representation of you was that a lack of
7 Motions having been filed; do you recall that?

8 A I believe I do recall.

9 Q Okay.

10 A Maybe it was something about an Evidentiary Hearing.

11 Q And in fact, I believe the Magistrate Judge even
12 indicated to you at the time that Mr. Leonard was one of
13 only a couple of attorneys out of 20 some Defendants in your
14 case that had filed a number of Motions?

15 A Yes, sir. I believe he said that.

16 Q In fact, you know that to be the case, that Mr. Leonard
17 filed a number of Motions on your behalf?

18 A I believe he filed a Motion of Discovery.

19 Q Okay. He filed some other Motions as well. You are
20 not aware of that?

21 A No.

22 Q Okay.

23 A Aware of what?

24 Q That David Leonard filed a number of Motions on your
25 behalf in this Court.

1 A The Motions I remember that he has filed is either been
2 to come off my case or the Motions that I filed. I believe
3 he filed a Motion for a private investigator that talked to
4 me one time.

5 Q Well, he filed a Motion to Compel Disclosure of the
6 existence and substance of promises of immunity, leniency,
7 or preferred treatment; are you aware of that?

8 A No, sir. I never got no Motion saying nothing like
9 that. If he filed any Motions that I don't have, it's
10 because it was never sent to me.

11 Q He filed a Motion for the United States to disclose the
12 identity of all participating informants in your case; are
13 you aware of that?

14 A No.

15 Q He filed a Motion for Disclosure of 404(b) Evidence;
16 are you aware of that?

17 A No, sir. I've never heard of it.

18 Q A Motion for Early Jencks Material, in other words,
19 witness statements against you; are you aware he filed that?

20 A Is that the Motion of Discovery?

21 Q It is a Motion for Early Jencks Material, statements by
22 witnesses against you. You are not familiar with that?

23 A In the Motion of Discovery -- I had statements in the
24 Motion of Discovery. That is the only Motion -- I mean,
25 statements that I have seen.

1 Q Okay.

2 A Or any other Motions that I have seen so far.

3 Q Now, when the case was filed, being the indictment
4 returned by the Grand Jury in this case, it charged you with
5 three separate offenses.

6 It charged you with participation in the conspiracy,
7 that you ultimately pled guilty to. It charged you with a
8 substantive count of possession of methamphetamine, and also
9 possession of a firearm in furtherance of drug trafficking.
10 You are familiar with that; correct?

11 A Yes, sir.

12 Q And Mr. Leonard explained to you that on the drug
13 trafficking or conspiracy count, you faced a minimum
14 mandatory of ten-years up to life imprisonment.

15 A He did.

16 Q Okay. And in fact, the Magistrate Judge had already
17 explained that to you as well when you initially appeared
18 before this Court; correct?

19 A The Magistrate Judge?

20 Q Downstairs.

21 A Yeah, whenever we got arraigned.

22 Q He also explained to you that on top of that, you would
23 face at least another five years of imprisonment for the
24 firearm charge if you were convicted of that; correct?

25 A Yes, sir.

1 Q Okay. And, of course, Mr. Leonard explained to you
2 that by entering into a guilty plea you would avoid that
3 five-year consecutive conviction for the firearms charge?

4 A Yes, sir, he did. But after I looked at the plea
5 itself, I was enhanced two enhancements, factor four, and I
6 would have been better off if I had took the gun charge.

7 Q Okay. What were those enhancement factors that you
8 noticed?

9 A It was a two point -- a two-level enhancement.

10 Q For what?

11 A The gun.

12 Q Are you talking about actually looking at the
13 Presentence Report or looking at the plea agreement?

14 A It was in the Presentence Report.

15 Q Okay. And you are saying that that two-level increase
16 is more than the additional 60 months that you would receive
17 had you been convicted of the gun charge at trial?

18 A I believe. I believe it's somewhere around the same
19 thing if I was -- if the gun would have been dismissed
20 completely, I am still being kind of charged with it.

21 THE COURT: Mr. Dishner, where did you get that
22 idea?

23 THE WITNESS: Of what?

24 THE COURT: That you would have been better off
25 without the gun enhancement and conviction on the gun

1 charge?

2 THE WITNESS: Whenever I was adding up the time, I
3 thought that whenever I added up the time, it seemed like it
4 was more on the two point level -- the two level -- because
5 of the two level, it made it 188 to 235. If it wouldn't
6 have been for the two level enhancement, I think it would
7 have been 150 to 180.

8 THE COURT: Okay.

9 BY MR. BOWMAN:

10 Q So you are talking about a difference of 30 some months
11 between the enhancement and not having the enhancement;
12 correct?

13 A If I added it up right, I thought it was right at the
14 five-year mark.

15 Q Okay. And you understood from your conversation with
16 Mr. Leonard that the guideline range was advisory. In other
17 words, the Court is not bound by that guideline range.

18 A I didn't understand that until Mr. Greer told me at the
19 hearing that we had on November the 17th. He explained to
20 me about the guideline range.

21 Q Okay. And of course the Court explained to you, and I
22 am sure that both the Magistrate Judge and Mr. Leonard
23 explained to you that the Court has no discretion however to
24 depart below a minimum mandatory sentence.

25 So while the two levels that you have just talked about

1 with regards to the enhancement to your guideline range, the
2 Judge has the discretion to depart away from that.

3 If you'd been convicted of the gun charge, the Judge
4 had no discretion but to sentence you to a five-year
5 consecutive sentence. That was explained to you; wasn't it?

6 A I believe so, sir.

7 Q Okay. And one of the things that you would have
8 discussed with Mr. Leonard was the proposed plea agreement
9 that the United States had sent to Mr. Leonard. You went
10 over that plea agreement; didn't you?

11 A Mr. Leonard come to me maybe about a week and a half
12 before my Court hearing. We sat down maybe 20 to 25
13 minutes. He explained, I think, the rough scenario of the
14 plea agreement.

15 He didn't even give me time to take it back to the pod
16 to sign it. He said that if I wanted it, I had to sign it
17 before he left. That's how it went that day.

18 Q Well, let's talk about that then. You signed your plea
19 agreement. If you will look there on the screen.

20 (Document displayed on the computer screen.)

21 BY MR. BOWMAN:

22 Q Do you recognize that as your plea agreement?

23 A Yes.

24 Q In fact, that is your initials down at the bottom?

25 A Yes, sir.

1 Q Okay. And on the last page, that is your signature;
2 correct?

3 A Yes, sir, it is.

4 Q Okay. You signed that on October the 19th of 2017?

5 A Yes, sir.

6 Q Okay. And you also -- well, following that, it was
7 November the 7th of 2017 that you entered your plea;
8 correct?

9 A November the 17th.

10 Q You are right. On November the 17th, excuse me.

11 A Yes, sir.

12 Q So it was a month that had passed between talking to
13 Mr. Leonard about your plea agreement and when you actually
14 came before this Court and entered the plea?

15 A Well, we talked again, like -- it's on record that we
16 talked again, like maybe -- oh, I don't know what date it
17 was. The 17th of November -- it might have been a Friday.
18 He explained to the Judge that -- it was like the Friday
19 before that or that Thursday -- that he came and talked to
20 me, and that I asked him not to turn it in. That I was
21 really wanting to go to trial instead of taking a plea.

22 Q Okay. Now, the United States sent Mr. Leonard a plea
23 agreement before this one, back in August of 2017. And
24 Mr. Leonard came and met with you about that plea agreement
25 as well; didn't he?

1 A I believe so, sir. Yes, sir.

2 Q Okay. And Mr. Leonard requested that some changes be
3 made to that plea agreement?

4 A He did?

5 Q The earlier plea agreement, Mr. Leonard asked me, on
6 behalf of the United States, to make some changes to that
7 plea agreement; isn't that correct?

8 A Yes, sir, he did.

9 Q Okay. And, in fact, the plea agreement that you signed
10 on October the 19th of 2017, reflected those changes that he
11 had requested be made?

12 A Yes.

13 Q Okay. And then, in fact, when you and Mr. Leonard went
14 through the plea agreement some additional language was
15 added; correct?

16 A From what I can see, yes, sir.

17 Q Okay. And you initialed that?

18 A I did.

19 Q Okay. So when you signed that plea agreement on
20 October the 19th of 2017, that plea agreement reflected
21 changes that you had requested to the earlier plea
22 agreement, and also a hand-written change made by you and
23 Mr. Leonard?

24 A That was the plea agreement he had brought to me. It's
25 the second one.

1 Q Okay. That handwriting was not on that though until
2 after you and Mr. Leonard discussed it; correct?

3 A As far as I know. I thought that it was. I am not
4 sure. When I signed it, it was on there, I think.

5 Q Okay. But Mr. Leonard went through all of this
6 information with you; correct?

7 A Most of it.

8 Q Okay. And after you signed this, you then requested
9 Mr. Leonard to go to trial. That you didn't want to go
10 through with the plea agreement; is that correct?

11 A That -- I'm guessing it was like two weeks afterwards,
12 I asked him to come and talk to me and I told him I really
13 wasn't wanting him to turn the plea agreement in. That I
14 would like to go to trial.

15 Q So at that point in time, I think you indicated on
16 direct examination that Mr. Leonard filed a Motion to
17 withdraw from your case?

18 A Yes, sir, he did.

19 Q Okay. And you indicated that the reason that
20 Mr. Leonard sought to withdraw is because you wanted to go
21 to trial?

22 A Yes, sir.

23 Q But, isn't it --

24 A It was one of them. He filed for a client privilege --
25 I can't remember if it was client privilege confidentiality

1 or client -- I can't remember which one -- what it was --
2 what kind of Motion he filed to come off my case. But, yes,
3 he filed a Motion to come off my case because I wanted to go
4 to trial.

5 Q Okay. But isn't it true that Mr. Leonard had indicated
6 to you that if you wanted to go to trial, he was willing to
7 try the case?

8 A Mr. Leonard, during the conversation we had on November
9 the 17th at the hearing, after Mr. Greer told him that he
10 wasn't coming off my case, that we was just going to have to
11 get along. He said, "Your Honor, I have no problem." I
12 don't know if you have seen the paperwork or not --

13 Q I have not.

14 A He said, "Your Honor, I have no problem representing
15 him, as long as he doesn't want to take the stand at his
16 trial. That's where we get into problems. I don't want to
17 get into that, Your Honor." Such and such, and such and
18 such, somewheres around like that. So, yeah, that was right
19 after that.

20 Q But isn't it true that what Mr. Leonard had told you
21 was that it was your decision, ultimately, whether or not to
22 testify?

23 A Yes, sir.

24 Q Okay.

25 A I still don't know what he was talking about me lying.

1 That's what I -- that's another thing. I was never going to
2 get on the stand and lie about nothing.

3 Q Well, isn't it true that Mr. Leonard advised you that
4 it was against your best interest to take the witness stand?

5 A Mr. Leonard never really -- when we talked about it he
6 didn't really even talk to me about taking the witness
7 stand. He was more or less wanting me to take the plea. He
8 said he didn't want to see me get a life sentence.

9 Q Okay. So in other words, Mr. Leonard was attempting to
10 negotiate a plea that he felt like was in your best
11 interest?

12 A That he felt like was in mine and his interest.

13 Q Okay. Well, what was his interest?

14 A Well, I feel like that he really didn't want to take
15 the case on. That is how I felt. I really don't know
16 really what his interest was, sir.

17 I tried to talk to him and tried to talk to him, and
18 the more we talked, the more that it come -- like we
19 couldn't get along about the situation. That's one
20 reason -- one thing he talked about in the Motion was that
21 me and him couldn't get along that -- the client privilege
22 thing had been too far gone.

23 That was the big issue. Because I wanted to go to
24 trial and he didn't feel like I should or he didn't want me
25 to, one of the two.

1 Q Well, I know you indicated that the Magistrate Judge
2 told you that you had a really good lawyer?

3 A Yes, sir.

4 Q In fact, you had learned that Mr. Leonard had tried a
5 number of cases in this Court?

6 A Yes, sir.

7 Q Okay. And that even so, it was your feeling that he
8 didn't want to take your case to trial?

9 A After what he said in the Motion in my hearing, I
10 really did feel like it was best that we parted ways. And
11 my feeling is, I really feel like he didn't want me to go to
12 trial.

13 Q Now, on November the 17th of 2017, during that
14 hearing, where only you and Mr. Leonard were present before
15 the Judge, at that point, Judge Greer gave you the
16 opportunity --

17 A Yes, sir.

18 Q -- to tell him that you didn't feel like Mr. Leonard
19 was looking out for your best interests. You had that
20 opportunity; correct?

21 A Yes, sir.

22 Q Okay. Did you tell the Judge that?

23 A No, sir. I didn't. I told the Judge that I would just
24 take the plea bargain, that I would go ahead and get it over
25 with. The plea bargain was already signed. I was -- once

1 Mr. Leonard started talking about the Motion that he filed
2 and about my case, I really got scared and upset.

3 So I just, more like I said in the Motion, I would just
4 go ahead and get it over with. But after I reflected on it
5 for a couple weeks, I really see that how it -- I really
6 feel like that -- not that my rights had been violated but,
7 maybe I wasn't treated fairly by Mr. Leonard at the time.

8 You know, it had nothing to do with the Court, it's
9 just when Mr. Leonard started talking about -- I don't even
10 know where he thought that we was going to fist fight or
11 anything like that -- it really upset me, and it scared me.
12 So I just wanted to get it over with.

13 Q Well, what had Mr. Leonard done that was unfair to you?

14 A Mr. Leonard, as far as I know, me and him just couldn't
15 get along because I wanted to go to trial. He didn't do
16 nothing unfair to me, as far as I know.

17 Q We have established that he filed Motions on your
18 behalf. He discussed every plea offer that was made by the
19 United States with you. That is true; isn't it?

20 A Yes.

21 Q He managed to get the United States to modify the first
22 plea agreement; correct?

23 A Yes, sir.

24 Q He made additional hand-written changes to the second
25 plea agreement that the United States accepted; isn't that

1 true?

2 A From what you showed me, yes, sir, it looks like that's
3 true.

4 Q Have you read the change of plea colloquy in this case?

5 A Mr. Leonard had read it to me, somewhat, mostly about
6 my rights.

7 THE COURT: what he is asking about, Mr Dishner,
8 is the transcript.

9 THE WITNESS: Oh, the transcript, yes. I --

10 BY MR. BOWMAN:

11 Q Did you go over that with Mr. Fabus?

12 A Yes, sir.

13 Q Okay. And so you know that the Judge went over this
14 factual basis with you at that hearing?

15 A Yes, sir.

16 Q And talked about the changes that were made in the
17 factual basis and that you agreed to those; correct?

18 A Yes, sir.

19 Q Now, the second part from the discussion you had with
20 Judge Greer about whether Mr. Leonard would continue in your
21 representation, I then came back into the Courtroom and the
22 Court went ahead with the change of plea. You recall that
23 as being the series of events; don't you?

24 A Yes, sir.

25 Q And the Judge indicated to you what you were charged

1 with at that hearing, and that you had entered into, of
2 course, this written plea agreement; correct?

3 A Yes, sir.

4 Q And as we have established, I have not been privy to
5 that hearing about Mr. Leonard's representation. But Judge
6 Greer indicated during that hearing that he understood,
7 pursuant to that plea agreement, and pursuant to your
8 representations to the Judge that morning, that you wished
9 to change your plea to a plea of guilty to count one of the
10 indictment. And you said, "Yes, sir."

11 A Yes.

12 Q And the Judge asked you if you understood that you were
13 under oath at that point, and you understood that; correct?

14 A Yes, sir.

15 Q And you understand that you are under oath here today?

16 A Yes, sir.

17 Q And you understand that if you testify falsely, you can
18 be prosecuted for testifying falsely before this Court?

19 A Yes, sir.

20 Q You indicated that you had some difficulty in reading
21 and writing to the Court; isn't that true?

22 A Yes, sir.

23 Q But you indicated that Mr. Leonard had explained to you
24 anything that you had difficulty in reading in this case;
25 correct?

1 A Mr. Leonard, what I couldn't read, he read to me, for
2 the most part.

3 Q He explained to you any questions you had about the
4 plea agreement, or of the indictment, or any other documents
5 in this case; correct?

6 A Yeah, for the most part.

7 Q Well, is there something you asked him that he didn't
8 explain to you?

9 A Through the plea agreement, I think he -- there was
10 another thing about the gun charge that was supposed to have
11 been dismissed. I thought that I would be able to get in a
12 treatment program while I was in the feds and there to the
13 point of enhancement, it knocked me out of that.

14 That was another reason that I think that me and him
15 was at odds about the plea agreement.

16 At first he told me that I could -- I understood
17 that -- when me and him spoke the other -- that it was going
18 to be 120 months. I would be able to get a drug treatment
19 program. In six to seven years I would be home.

20 Once the plea agreement was brought to the Court, and
21 we talked again, he explained to me that it would be more
22 than 120.

23 Q Well, now, the Magistrate Judge had explained to you
24 the minimum sentence you could get on count one was ten
25 years.

1 A Uh-huh.

2 Q That was the bare bottom. Okay. Mr. Leonard had
3 explained to you that the minimum you could get on count one
4 was ten years; correct?

5 A I'm sure he said the minimum would be ten years.

6 Q Okay. And then if you were then also convicted of the
7 gun count, that was another five years at least?

8 A Yes, sir.

9 Q And that the Court could sentence you up to life?

10 A On November the 17th, Mr. Greer told me it could be up
11 to life. Yes, sir.

12 Q Okay. Well, the Magistrate Judge told you that as
13 well; correct?

14 A If he did, I don't recall it.

15 Q Mr. Leonard told you that; didn't he?

16 A Well, Mr. Leonard didn't say I would get life. He just
17 said that if I went to trial that I would probably get life.

18 Q Okay. And he told you that was based upon his
19 calculation of your criminal history?

20 A My criminal history is DUI -- and theft over a
21 thousand.

22 Q Well, that is not the only prior convictions you had?

23 A Yeah. Misdemeanor assault, that is what the points
24 are, the points.

25 Q Have you reviewed your Presentence Report in this case?

1 A I have, mostly it is all juvenile, and underage
2 consumption, DUI, theft over a thousand. You can look at it
3 there if you'd like to real quick. I don't mind.

4 Q Your criminal history score was 21.

5 A Yes, sir. I believe that's wrong.

6 Q So are you saying that some of these prior convictions
7 are not you?

8 A No, sir. I never said that. I said that some of them,
9 like I thought some of the points might have been a little
10 higher than what they were supposed to have been.

11 Q Okay. But all these prior convictions then are you?

12 A If they are on there.

13 Q Now, you indicated Judge Greer explained to you what
14 the potential penalties were that you faced, and you
15 indicated that you understood that?

16 A Yes, sir.

17 Q Okay. And he explained to you that you could face up
18 to life in prisonment?

19 A Yes, sir, at my hearing, he did.

20 Q And the Judge also asked you about whether your
21 attorney had done any estimates for you of what your
22 guideline range might be; do you remember that?

23 A Yes, sir.

24 Q Okay. And you agreed that all you had received was
25 just an estimate?

1 A Yes, sir. He sent me a guideline range through the
2 mail.

3 Q Okay. And that was explained to you that that was only
4 an estimate. That, in other words, it was up to the Judge
5 to impose sentence; correct?

6 A Well, after I started looking at everything, it was the
7 Presentence Report was what I think was what showed me what
8 my time was going to be. I guess from the 188 to 235, the
9 Judge could go out beyond those guidelines, I guess.

10 Q But that was calculated after you entered your guilty
11 plea?

12 A Yes, that is in my Presentence Report.

13 Q But prior to entering your guilty plea, Mr. Leonard had
14 estimated what he thought your guideline range would be;
15 correct?

16 A Yeah. To the closest that he could.

17 Q And the reason it was to the closest that he could is
18 it is just an estimate.

19 A Yes, sir.

20 Q And you understood that?

21 A Yes, sir.

22 Q In fact, the Judge indicated to you that until that
23 Presentence Report was completed, the Judge wouldn't even
24 know what that estimate was; true?

25 A Yes, sir.

1 Q At that Change of Plea Hearing, the Court asked you if
2 you understood all the terms and conditions of that plea
3 agreement you signed, and you indicated that you did
4 understand those; correct?

5 A I did.

6 Q You agree that you placed your initials on each page
7 because you had reviewed every page of that plea agreement;
8 correct?

9 A Yes, sir.

10 Q And the Judge explained to you that if you chose not to
11 plead guilty that you could then go to trial?

12 A He did. Yes, sir.

13 Q In fact, the Judge indicated there was a jury trial
14 scheduled on December the 5th and that you could have your
15 trial on that date if you wanted to go forward?

16 A Yes, sir, he did.

17 Q Okay. And the Judge explained to you that you had the
18 right to testify, and the right to call witnesses at that
19 trial if you wanted to?

20 A Yes, sir.

21 Q And the Judge asked you if you understood that if your
22 plea was accepted on that November the 17th of 2017, that
23 there would be no trial, and you said you understood that?

24 A He did.

25 Q Now, Judge Greer asked you after that if you understood

1 and indicated that you had talked about it during the closed
2 hearing, but did you understand that it was unlikely that
3 the Court would later let you withdraw your guilty plea?

4 A Yes, sir. I believe I remember the Judge saying
5 something to that.

6 Q And you said, "Yes, sir. I understand." Is that true?

7 A If it is on there, I said it.

8 Q Okay. You indicated that nobody had put any pressure
9 on you mentally or physically to induce you to plea. Isn't
10 that true?

11 A Yeah. I guess so.

12 Q You indicated that no threats or promises had been made
13 to induce you to plead guilty. That's true, isn't it?

14 A That's true.

15 Q The Court asked you if you had reviewed the stipulation
16 of facts in the plea agreement, and you indicated that you
17 had. That's true; isn't it?

18 A Mr. Leonard went over them with me. I believe most of
19 them he went over with me.

20 Q And, in fact, the Court indicated that it was a rather
21 lengthy stipulation of facts. Isn't that true?

22 A If it is there, it is what it says, sir. Yes, sir.

23 Q And the Judge asked you if all those facts set forth in
24 paragraph four of the plea agreement were true, and you
25 said, "Yes, sir." Isn't that true?

1 A Yes, sir.

2 Q Now, but the Judge went beyond that. The Judge, Judge
3 Greer, asked you, "All right, and if there is any hesitation
4 about your answer to that question, Mr. Dishner, as I have
5 described, as I have told you several times, now is the time
6 to express it." Do you remember him asking you that?

7 A Yes, sir.

8 Q But you still didn't indicate to Judge Greer that you
9 wanted to go ahead with the trial.

10 A Sir, I was -- when Mr. Greer said that I would have to
11 get along with my attorney, and I had until December the
12 5th and we would go to trial, I felt like I had really no
13 choice but to take the plea at the time.

14 You know, that's really how I felt. Because the way me
15 and Mr. Leonard was having, you know, the heated arguments,
16 and he had already filed a Motion to come off my case.
17 Mr. Greer was going to leave him on my case.

18 Q But you have already told us that you didn't tell Judge
19 Greer that Mr. Leonard didn't want to try your case.

20 A Mr. Leonard stated it in his Motion.

21 Q Mr. Leonard said in his Motion, what?

22 A Mr. Leonard -- I'm pretty sure what it said in the
23 Motion was that, "Mr. Dishner wants to go to trial now. He
24 don't want to take a plea bargain. Due to that, there is
25 conflict of interest."

1 Maybe that is what it says -- or maybe client-attorney
2 -- client-attorney privilege -- something broke, that he
3 filed. It was something in the Motion that he filed to come
4 off my case that day of the 17th.

5 MR. BOWMAN: Well, Judge, I am sure that will
6 speak for itself. But, of course, I don't have access to
7 Mr. Leonard's Motion other than indicating that he was
8 filing a Motion to Withdraw.

9 BY MR. BOWMAN:

10 Q It had just been in September, approximately two months
11 before that, that you had asked Judge Corker for a new
12 lawyer. Did you tell Judge Corker that Mr. Leonard wouldn't
13 take your case to trial?

14 A At the time we really didn't have that discussion at
15 the time.

16 Q Well, what was your concern about Mr. Leonard at that
17 point in time?

18 A Well, I think that we had already started arguing.
19 Heated arguments, I believe. I am pretty sure that was what
20 it was about.

21 Q So there was some heated arguments. What were the
22 heated arguments about?

23 A I guess me not seeing it -- his point of view and him
24 not seeing my point of view. We just didn't see eye-to-eye,
25 sir.

1 Q Yet, when Judge Corker brought you before his Court in
2 September, you told him that you had changed your mind, that
3 you wanted Mr. Leonard to remain on your case?

4 A Yes, sir. After we talked, I told Mr. Corker that we'd
5 get along and would be fine, told him that we would make it
6 work.

7 Q How did you go from heated arguments to getting along?

8 A Well, he talks about -- Mr. Leonard talks about it in
9 the Motion -- maybe not the Motion, but the transcript.

10 We both one minute would be -- both of us would be fine
11 and the next minute one of us would be yelling. So to tell
12 you the truth, I still don't know to this day -- I can't
13 tell you what it was over. It had to be over the case. But
14 it wasn't nothing real, real serious other than me wanting
15 to go to trial.

16 Q So your disagreement, as you put it, was not real
17 serious but for the fact that you wanted to go to trial and
18 Mr. Leonard didn't think you ought to go to trial?

19 A Mr. Leonard, when I asked him a week before the hearing
20 that I wanted not to take the -- that I didn't want the plea
21 agreement brought to the Court and turned in. That I wanted
22 to go on to trial. That is, sir, when he filed the Motion.

23 Why he filed the Motion -- maybe you need to look at
24 the Motion that he said he filed, that way you can
25 understand it. Because I'm going around -- I feel like I am

1 going around in circles with you. That was the whole issue
2 between me and him.

3 Q Okay. Well, he did what you asked. He filed a Motion
4 to withdraw.

5 A This was his doing. I didn't ask him to file the
6 Motion. He did it. He filed the Motion himself this time
7 to come off my case because I wanted to go to trial.

8 Q Okay. Let's step back for a minute to this September
9 hearing before Judge Corker. Judge Corker had actually
10 brought in another attorney to appoint at that time. He
11 told you that; didn't he?

12 A No, he never told me that I was getting another
13 attorney.

14 Q But I mean he told you that he had prepared to appoint
15 another attorney if you and Mr. Leonard were not able to get
16 along.

17 A I believe his words was that we needed to get along.

18 Q So you are saying that Judge Corker forced you to keep
19 Mr. Leonard as your attorney?

20 A He didn't force me. I told him that we was all right.
21 That we would get along.

22 Q Okay.

23 A That's when he explained to me that Mr. Leonard was the
24 best of the best and I needed to listen to his advice. So
25 that is what I tried to do till the last of it.

1 Q Until after you entered your guilty plea?

2 A After we signed the plea and then we talked shortly
3 after that, I told him that I wanted to go to trial, that's
4 when we had a big --

5 Q That's when you had your what?

6 A Huh?

7 Q That's when you had your what?

8 A A big argument. A big -- like a big -- I guess that is
9 when he filed the Motion to come off my case.

10 Q Okay. So a few days before this hearing, you and
11 Mr. Leonard had a big argument.

12 A About a week and a half.

13 Q Okay. And what was the subject then of that argument?

14 A Well, it was just I felt like he hadn't showed me all
15 the evidence. I felt like that he --

16 Q Why you feel that way?

17 A Because of what I'd been presented, what little I had
18 been presented and --

19 Q Well, what had you been presented?

20 A The Motion of Discovery with some statements.

21 Q Okay. But you said that you didn't feel like
22 Mr. Leonard had showed you all the discovery?

23 A Not that he hadn't showed me all the discovery, that he
24 hadn't been -- that he hadn't tried his hardest on me
25 wanting to go to trial more or less.

1 Q Are you saying that Mr. Leonard hadn't tried hard
2 enough to get additional evidence --

3 A No --

4 Q -- that the Government might have in its possession?
5 Is that what you are saying?

6 A Not additional evidence of -- when me and him talked
7 about the Motions, he explained to me -- he did explain to
8 me what Motions that -- I barely remember some of them that
9 you said.

10 But he did explain to me some of them that he did --
11 that he filed, that I didn't have. That he never give to
12 me, the paper part.

13 And I explained to him that I wanted an Evidentiary
14 Hearing at the time. Which it might have been -- he might
15 have said that that wasn't something that he could do right
16 off hand. And then we kind of got into an argument about me
17 wanting to go to trial.

18 Q What did you tell him?

19 A I told him that I felt like he was pushing me towards
20 more of the, you know, as I asked him that I wanted to go to
21 trial, that I felt like he more and more pushed me towards
22 the plea bargain.

23 Even though I know he done a great job with the plea
24 bargain that I still wanted to go to trial. But he
25 wasn't -- he really wasn't happy with -- I guess that is

1 what he wasn't happy with, is that after he made up the plea
2 bargain, he didn't want to deal with the trial part.

3 Q You testified, when Mr. Fabus was questioning you, that
4 you were not maintaining your innocence here today.

5 A I said that -- yeah, I'm sorry -- I said that I am
6 not -- you know, I can't, you know, maintain my innocence
7 with what me and my lawyer talked about. That I am not
8 saying that I am not guilty. I am not saying I am guilty.

9 Q Well, you did say you were guilty --

10 A Okay.

11 Q -- under oath before this Court; didn't you?

12 A Yes, I did. I am not saying that I am not.

13 Q Just that you are wanting to go to trial?

14 A Yes, sir.

15 Q I think Judge Greer asked you, "And you are offering to
16 plead guilty because you are, in fact, guilty?" To which
17 you said, "Yes." Do you remember that?

18 A Yes, sir. I do.

19 Q The Court explained to you -- Judge Greer explained to
20 you that the Court had the authority to impose a sentence
21 above your guideline range. And that the Court could impose
22 a sentence of life in prison.

23 And you indicated that even so you still wanted to
24 plead guilty; isn't that true?

25 A Yes, sir. I believe I did.

1 Q And then the Court, at the very end of your Plea
2 Hearing, asked you once again, "Is there any hesitation on
3 your part at all about whether you want to go forward with
4 this guilty plea at this point?" Do you remember the Judge
5 asking you that?

6 A I do. Yes, sir.

7 Q The Judge said, "If that is what you want to do, so if
8 you want a trial, I will give you a trial." He told you
9 that; didn't he?

10 A Yes, sir.

11 Q But you still went ahead?

12 A Like I said, sir, I really feel that after what was
13 said, I had no choice in the matter. He didn't really want
14 to represent me to go to trial. I already signed the plea
15 bargain, that's why I went ahead and went with it.

16 Q The Court even went on to explain to you the benefit
17 that you had received in this plea agreement by virtue of
18 the quantity of methamphetamine, indicating the plea
19 agreement was less than what was contained in a statement
20 that you had given Agents. That was explained to you;
21 wasn't it?

22 A It was, sir.

23 Q And the Judge still asked you once again, "And the real
24 question, Mr. Dishner, is whether or not you have knowingly
25 and voluntarily entered this guilty plea?" And you said,

1 "Yes, sir."

2 A Yes, sir.

3 Q And Mr. Leonard indicated to the Court that one of the
4 concerns that you had voiced to him was the statement that
5 you had given to Agent Shannon Russell, Agent Jason Rourke,
6 and ATF Agent Jamie Jenkins back in July of 2016. Is that
7 true?

8 A Yes, sir.

9 Q Okay. And in that statement -- that was before you
10 were indicted in this case; correct?

11 A That is what it says.

12 Q Okay. They read you your Miranda rights before they
13 talked to you; correct?

14 A That is what it says.

15 Q You signed a --

16 EXAMINATION BY THE COURT

17 Q Did they? I mean, you keep saying, "That is what it
18 says." Did they read you your Miranda rights?

19 A They had me sign something, whatever that was.

20 Q Did they read you your Miranda rights?

21 A They give me a piece of paper to sign.

22 Q Did they read you your Miranda rights?

23 A Yes.

24 Q And did you give them this statement before you were
25 indicted in this case?

1 A Not the one that they signed saying that I said.

2 Q I'm sorry?

3 A Not the one that they're saying -- on the statement. I
4 never said two kilograms of meth. Never said nothing about
5 kilograms of meth. Never said -- there's a lot in the
6 statement that's not accurate. I said that in my last
7 hearing here.

8 Me and Mr. Leonard had a discussion about it. But
9 that's for me to be proven.

10 Q Mr. Dishner, let me ask you a simple question here.

11 If we have a trial on this and the Agents testify that
12 you gave them that statement, is there somebody other than
13 you who would testify that you didn't?

14 A Just me and the Agents.

15 Q All right. Let's assume you testify that you didn't
16 give them that statement. Who do you think that it is
17 likely that the jury will believe?

18 A I mean if the jury --

19 Q Let me ask you differently. What do you think the odds
20 are that a jury will believe you, somebody who has had a
21 lengthy history since you were 15-years of age of criminal
22 convictions over those Agents? What do you think the
23 likelihood of that is?

24 A I believe that they are liable to find me guilty, but I
25 believe if all the evidence will show everything that

1 pertains to my case, I believe that it would come out that
2 it is aposterous. (sic)

3 Q what is?

4 A Sixteen kilos in 38 days.

5 Q what evidence?

6 A whatever evidence they have.

7 Q well, you are risking a big chunk of your life on that
8 evidence. what evidence are you talking about?

9 A The evidence I am stating, sir, is that I was in jail
10 from 2015 -- from September of 2014 all the way to May of
11 2016. They are saying that I give them a statement that I
12 sold two kilograms a week for each week for approximately
13 two months.

14 That is ridiculous. Anybody in their right mind knows
15 that is ridiculous. The DA knows that would be ridiculous.

16 I've never had a drug charge in my life. I'm an
17 addict, not a drug dealer. I was out for 38 days for doing
18 a driving charge. That is what I have always been caught up
19 in, driving. And that is mostly my history, underage
20 consumption or driving.

21 Q Now, you made this statement on July the 13th of 2016.
22 When did you say you were in jail?

23 A Went in September the 19th of 2014. I think I got
24 out around May the 8th -- May the 10th. I was at the
25 halfway house.

1 Q of 2016?

2 A Yes, sir.

3 Q So you were out two months or more before you gave this
4 statement?

5 A I was at the halfway house in Kingsport for two weeks
6 and then I went home for my last three weeks before --

7 Q And what proof would you use to show that is
8 preposterous that you sold two kilos of crystal meth during
9 those two months? Two kilos a week.

10 A I don't have that, sir. I don't have a sale. I don't
11 have a buy. I wasn't selling drugs like it says. I never
12 admitted to nothing like that.

13 If I was going to admit to something so damaging, I
14 think I would have some type of reason why I admitted to it.

15 Q Whether you said that to the Agents or not, you told me
16 under oath that it was true; didn't you?

17 A What was true?

18 Q That this statement that you sold approximately two
19 kilograms of crystal methamphetamine per week for the last
20 two months. You told me that was true; didn't you?

21 A When?

22 Q Under oath.

23 A When?

24 Q On November the 17th.

25 A Did I say it was true?

1 Q You said everything in this factual basis was true;
2 didn't you?

3 A If I agreed to it sir, I'd say, yes, sir, I'd agreed to
4 it.

5 Q Now, the fact that I didn't ask you just one time, I
6 asked you several times if what you had stipulated to here
7 was true; didn't I?

8 A You never said anything about a statement -- well, you
9 did. You did. And I said that I don't -- that was one of
10 the issues we had. Mr. Leonard said the same thing was
11 about --

12 Q No, sir. I am sitting here looking at the transcript,
13 Mr. Dishner. What you said is, "Yes, it is true."

14 A I mean, if I said yes, I said, yes, sir.

15 Q I asked you if you agreed with this summary of what you
16 did in the case, as it is set out in your plea bargain. You
17 said, "Yes, sir."

18 I asked you if everything in it was true. "Yes." I
19 asked you if you would stipulate under oath that everything
20 in it was true. You said, "Yes."

21 A Yes, sir.

22 Q Now, why did you do that?

23 A I didn't understand what was being asked of me.

24 Q What didn't you understand about the question, "Is it
25 true?"

1 A well, I don't think you asked me about a statement. I
2 think you said paragraph four. I didn't -- I think I
3 stopped my lawyer two or three times, and was asking him
4 what was --

5 Q I asked you if you had read paragraph four carefully.
6 Do you remember what you said?

7 A I can't read -- I can't hardly read. My lawyer read
8 most of everything to me. But if I read --

9 Q Mr. Dishner, I know that. But you have written a
10 letter to the Court here that doesn't have a single
11 grammatical mistake in it as far as I can tell.

12 A My bunkie helped me write -- I never wrote nothing. It
13 was my bunkie that helped me do it.

14 Q well --

15 A I don't write no letters.

16 Q Either whether Mr. Leonard read it to you or whether
17 you read it yourself, you said, "Yes." Right?

18 A Yes, sir.

19 Q And I asked you if you had reviewed it carefully with
20 your attorney. You said, "Yes." And I asked you if you
21 agreed with it, and you said, "Yes." And so on; right?

22 A Yes, sir.

23 Q why would you stand there and do that?

24 A Like I was telling the DA, sir, that morning, once
25 things was said by Mr. Leonard, and it might not be much to

1 you all, but what was said by him, and he's my lawyer, I
2 really felt like he was against me. So I just agreed to the
3 plea bargain.

4 THE COURT: Go ahead, Mr. Bowman.

5 MR. BOWMAN: Thank you, Your Honor.

6 CROSS EXAMINATION (Continued)

7 BY MR. BOWMAN:

8 Q Let's put this statement aside for a moment,
9 Mr. Dishner, and let's talk about your factual basis.

10 You have already agreed that Document 395 in this case
11 is your plea agreement which you signed; correct?

12 A Yes.

13 Q Paragraph four. (As read) "In support of the
14 Defendant's guilty plea, the Defendant agrees and stipulates
15 to the following facts, which satisfy the offense elements.
16 These are the facts submitted for purposes of the
17 Defendant's guilty plea. They do not necessarily constitute
18 all of the facts in the case. Other facts may be relevant
19 to sentencing. Both the Defendant and the United States
20 retain the right to present additional facts to the Court to
21 ensure a fair and appropriate sentence in this case."

22 That is what it says; correct?

23 A Yes.

24 Q Is that a yes?

25 A Yes, sir.

1 Q This lady here is the Court Reporter. She has to hear
2 your verbal --

3 A Yes, sir.

4 Q -- answer in order to take it down.

5 A Yes, sir.

6 Q Let's look at these paragraph by paragraph, and see
7 what you agree with now versus with what you agreed with on
8 November the 17th.

9 This indicates you were (as read) "a member of a drug
10 trafficking organization operating primarily in Sullivan
11 County, Tennessee and Southwest Virginia during the time
12 frame of the conspiracy charged in the superseding
13 indictment."

14 That is true; isn't it?

15 A Southwest Virginia, is that Sullivan County?

16 Q It says primarily in Sullivan County, Tennessee and
17 Southwest Virginia.

18 A Oh.

19 Q That is where the drug trafficking organization was
20 operating. Is that true or not?

21 A That is what I signed, sir. I can't go -- I can't
22 dispute what I signed.

23 Q (As read) "Since approximately January 2015, the
24 organization obtained crystal methamphetamine, primarily
25 from Georgia, which was transported to Sullivan County,

1 Tennessee and Southwest Virginia, where it was distributed."

2 Is that true?

3 A I don't know if it's true or not.

4 Q Well, you told Judge Greer on November the 17th that it
5 was true.

6 A I agreed to something -- I've already said I agreed to
7 it and signed it.

8 Q Okay.

9 A I had already signed it.

10 Q Well, on June 21 of 2016, you were arrested in Bristol,
11 Tennessee in possession of approximately three ounces of
12 crystal methamphetamine. That's true; isn't it?

13 A I was arrested.

14 Q With approximately 3 ounces of crystal methamphetamine.

15 A The three ounces of crystal methamphetamine was
16 not nowhere near me or on me.

17 Q You told Judge Greer on November the 17th, that was
18 true; didn't you?

19 A I did.

20 Q Are you telling the Judge that wasn't your three ounces
21 of crystal meth today?

22 A No, I am not.

23 Q What are you saying?

24 A I am saying that some of it I don't -- I still, you
25 know, I guess as you read it, I should have never signed it.

1 That is where we go back to my lawyer.

2 Q It said you had a handgun with you, an Iver Johnson
3 .32 caliber revolver. That is true; isn't it?

4 A There was a gun in the car.

5 Q Whose car was it?

6 A It wasn't mine.

7 Q Were you driving?

8 A I was.

9 Q Where did you get the car?

10 A It was a borrowed car.

11 Q From who?

12 A Timothy Green.

13 Q Timothy Green?

14 A Yeah.

15 Q How did you know Timothy Green?

16 A I worked on cars for him.

17 Q You met him through Stevie Hilliard; didn't you?

18 A I didn't meet him through Stevie Hilliard. I met
19 Stevie Hilliard through him.

20 Q You told Agents that you got Timothy Green's name from
21 Stevie Hilliard who you were in jail with; isn't that true?

22 A That's what they say. That's what it said. It's
23 wrong.

24 Q But you are saying that it is the other way around?

25 A It is the other way around.

1 Q okay. So you are saying that you knew Tim Green, and
2 Tim Green had introduced you to Stevie Hilliard?

3 A Uh-huh.

4 Q okay. And you know both of them have been convicted in
5 this case?

6 A Yes. They was picked up with me and his cousin.

7 Q Now, how long have you known Tim Green?

8 A Not long. I was at the halfway house needing work, he
9 allowed me to work on some vehicles for him for money.

10 Q okay. Was one of those vehicles a white Mazda RX-8?

11 A No. It ain't a white Mazda RX-8. It is, I think, a
12 couple of Hondas and a couple trucks.

13 Q okay. When did he introduce you to Stevie Hilliard?

14 A Sometime after I got out of the halfway house.

15 Sometime, I can't remember what month it was -- June.

16 Q June of?

17 A Of '16.

18 Q Of 2016. Stevie Hilliard was in jail then; wasn't he?

19 A Yeah. He was in jail.

20 Q Did you go to the jail to meet Stevie Hilliard?

21 A No. I talked to him on the phone.

22 Q You called Stevie Hilliard, a man that you had not
23 known prior to that, on the phone in the jail?

24 A No, he spoke with him on his phone and I talked to him.

25 Q What did you talk to him about?

1 A About fixing cars.

2 Q You were talking to a man who was in prison about
3 fixing cars?

4 A Some of the vehicles belonged to him that Tim Green had
5 at his house.

6 Q Okay. Did Stevie Hilliard hire you to work on his
7 cars?

8 A No. Tim Green hired me.

9 Q Okay. How did Tim Green pay you?

10 A Money.

11 Q You said before you were an addict. Did he ever pay
12 you in methamphetamine?

13 A No.

14 Q When you were arrested in June of 2016, you have
15 indicated there was a gun in the car. Where did that gun
16 come from?

17 A I don't know, sir. I am not really sure. There was a
18 woman inside the vehicle at the time.

19 Q Who was the woman?

20 A I am not really sure what her name was. It's in the
21 police report.

22 Q Why was she in the car?

23 A She was getting a ride from where she had broke down
24 at. A friend asked me to pick her up because her car was
25 broke down.

1 Q Who asked you to pick her up?

2 A I think it was Donnie -- Donnie Lee, one of her friends
3 had called me and asked me to pick her up.

4 Q So you borrowed a car from Tim Green?

5 A One that I was working on for him, yeah.

6 Q Did he know you had borrowed it?

7 A Yes. He's the one that told me which one to take.

8 Q They searched your cellular telephone at that point;
9 didn't they?

10 A They took my phone.

11 Q Okay. And you had a number of text messages on your
12 phone that are outlined in the factual basis of the plea
13 agreement. You are familiar with those text messages on
14 your phone; aren't you?

15 A Yes, sir.

16 Q Okay. So the text messages that are outlined here in
17 your plea agreement, that's true; isn't it?

18 A I signed it, I guess it's true.

19 Q Well, you keep saying that, "If I signed it, I guess
20 it's true." But haven't you told the Judge that some of the
21 things in this plea agreement aren't true?

22 A Well, not true -- is that some of it I didn't
23 understand. I didn't realize that it was in it, before I
24 signed it. No fault on my own.

25 Q So are you saying that there are things that you didn't

1 know were in here when you signed this plea agreement?

2 A Like I said, I can't read and write that good.

3 Q Didn't you tell the Judge that you went over this plea
4 agreement with Mr. Leonard?

5 A Mr. Leonard.

6 Q Okay. And you have been reading along on the screen
7 there, haven't you today?

8 A Yeah, I've been going over what you say, yeah.

9 Q You had a text message with Quinton Hatcher. That's
10 true; isn't it? You know Quinton Hatcher; don't you?

11 A I don't know him personally.

12 Q Well, you had his name in your phone; didn't you? You
13 text messaged with him; didn't you?

14 A Most the time I never texted anybody. Somebody else
15 had done it on the phone.

16 Q That is not what I asked you. Did you know Quinton
17 Hatcher or not?

18 A Yeah. I know who Quinton Hatcher is.

19 Q I'm sorry. What?

20 A Yes. I knew him.

21 Q You knew him. How did you know Quinton Hatcher?

22 A From jail.

23 Q From where?

24 A From jail.

25 Q From jail?

1 A Uh-huh.

2 Q Okay. And so you had his number in your phone?

3 A I did.

4 Q You knew Brian Danner as well; correct?

5 A Yeah.

6 Q And you texted Brian Danner; isn't that true?

7 A If there is a text on there, I must have texted him.

8 Q You said, (as read) "Bro, I need that 1350 + 300 on gun
9 I could of soils it two days ago but your my boy and try to
10 call your brother he owes me 65 I got to have ulit". You
11 wrote that; didn't you?

12 A It's on the phone, I guess I did.

13 Q In fact, you admitted in your plea that those text
14 messages were about collecting drug proceeds. That's true;
15 isn't it?

16 A Yes, sir.

17 Q You texted Timothy Green; isn't that true?

18 A Yes, sir.

19 Q You indicated that those text messages were about
20 dropping off drug proceeds to Tim Green. Isn't that true?

21 A I never knew it said that. But I signed it, so I guess
22 so.

23 Q Are you saying you never knew your plea agreement said
24 that?

25 A I never knew it. That's what I was saying about

1 Mr. Leonard. He didn't tell me everything. I would've
2 never signed nothing like that.

3 Q Well, you sent that text message to Tim Green.

4 A I'd say it doesn't mean that. People use that phone.
5 That phone didn't even belong to me that they took from me.
6 It can be proven if they just looked to see who it belongs
7 to.

8 Q You texted somebody known as Jermy. That's Jeremy
9 Wilson; isn't it?

10 A I don't know Jeremy Wilson.

11 Q You don't know Jeremy Wilson. Who is Jermy then?

12 A I have no clue, sir.

13 Q What about Roderick McMorris, you knew him; didn't you?

14 A I think that's a typo. No, sir, I didn't know him.

15 Q You didn't know Roderick McMorris?

16 A I had never even seen Roderick McMorris. I am pretty
17 sure in his plea agreement they took out all these texts
18 that was on his from me and him where --

19 Q So you have reviewed his plea agreement then?

20 A No. I spoke with him.

21 Q You spoke with him?

22 A Yeah. He come through the jail.

23 Q Okay. Well, that brings up another question. You
24 indicated that you had your bunk mate write some of your
25 Motions for you. Is that right?

1 A He's wrote all my letters.

2 Q Okay. Did he go over those with you?

3 A Yeah.

4 Q Who was your bunk mate?

5 A Thomas Elliott.

6 Q Tom Selleck?

7 A Thomas Elliott.

8 Q Oh. Thomas Elliott. Okay.

9 A E-l-l-i-o-t-t.

10 Q Where were you housed with him?

11 A I am housed here -- at the Jonesboro Jail.

12 Q Okay. And he wrote all those letters for you?

13 A Yes, sir.

14 Q Did he give you some advice?

15 A No. I don't think no advice.

16 Q Did you talk to him about your case?

17 A Not about the main thing. Just what I wanted to write
18 about. He knows about whatever I was wanting him to write
19 about. I had no choice.

20 Q You said you talked to Roderick McMorris in jail. What
21 did you talk to Roderick McMorris about?

22 A He walked up to my door and was saying that my name was
23 on his stuff, and his name was on my stuff, and neither one
24 of us knew each other.

25 And that his lawyer got it straightened out or

1 something. He stayed maybe about five or ten minutes and he
2 left the next day.

3 Q Do you see any of your other co-defendants at the jail?

4 A No, sir.

5 Q None?

6 A I ain't seen none.

7 Q You know Mark Morrison; correct?

8 A I've heard of him.

9 Q You've heard of him?

10 A Yes, sir.

11 Q Okay. Why would there be text messages to him in your
12 phone?

13 A If his name is in my phone that's because somebody put
14 it there. I don't know the name.

15 Q Somebody put it there. But you told the Judge that all
16 of this was true and that in those text messages Mark
17 Morrison had contacted you in order to give you drug
18 proceeds belonging to Tim Green; isn't that true?

19 A I signed it. Yes, sir.

20 Q You knew Tracy Arnold?

21 A I knew of him.

22 Q Knew of him. How did you know of Tracy Arnold?

23 A Same thing, jail.

24 Q Before or after this case?

25 A It was before this case.

1 Q okay. So you met him in jail before this case ever
2 came along?

3 A Uh-huh.

4 Q Is that a yes?

5 A Yes, sir. I met a lot of people in jail.

6 Q Now, you agreed in your factual basis that you had sold
7 approximately 2 kilograms of crystal methamphetamine per
8 week for Timothy Green for the last two months and you are
9 telling the Judge now that that's false; is that true?

10 A I'm telling that it is not accurate.

11 Q Is not accurate?

12 A Yeah.

13 Q So you did sell crystal methamphetamine for Tim Green
14 just not 2 kilograms a week?

15 A I never said that. I said that I was a junkie and I am
16 a user.

17 Q what is the truth here?

18 A The truth is I was a user.

19 Q Okay. But you told Judge Greer back in November that
20 you were selling approximately two kilograms of crystal meth
21 per week for Timothy Green?

22 A I admitted to it and signed it. Yes, sir, I did.

23 Q So it was true back then, but you are saying today it
24 is not true?

25 A I am saying I signed the plea bargain that I shouldn't

1 have signed.

2 Q And you were under oath in November of 2017 when you
3 told Judge Greer this was all true?

4 A Yes, sir.

5 Q And you are under oath here today and you are telling
6 Judge Greer that is not true?

7 A I'm not saying that it is not true. I'm saying that --

8 Q You are not saying that it is not true?

9 A Yes, sir.

10 Q Did you know Brian Danner?

11 A I did.

12 Q You did know him; right?

13 A Yes, sir.

14 Q How did you know Brian Danner?

15 A We'd been friends for about six months before I went
16 back to jail.

17 Q Before you went back to jail which time?

18 A This time here.

19 Q So you had been friends with him since early 2016 until
20 the middle of 2016?

21 A Sometime -- I got out in May. Yeah, I met him in jail
22 again sometime before May, sometime.

23 Q So you met Brian Danner in jail also?

24 A A lot of these guys they have on my case I met in jail.

25 Q Okay. And you knew that Brian Danner was selling

1 crystal methamphetamine for Tim Green?

2 A Brian Danner admitted to selling crystal meth for Tim
3 Green.

4 Q And you told Judge Greer that he was selling crystal
5 meth for Tim Green back in November of 2017?

6 A Yes, sir. I did.

7 MR. BOWMAN: I believe that's all the questions I
8 have.

9 THE COURT: Anything else, Mr. Fabus?

10 MR. FABUS: I did have one question, just to
11 verify.

12 REDIRECT EXAMINATION

13 BY MR. FABUS:

14 Q When you filed your Motion to withdraw the plea
15 agreement this last time, had you received the Presentence
16 Report yet at the time that you actually asked to get out of
17 the plea?

18 A No, sir.

19 Q It wasn't even prepared yet; correct?

20 A Yeah, it wasn't.

21 Q And then I am the one that went over that with you;
22 correct? You didn't go over that with Mr. Leonard?

23 A Right. Correct.

24 Q Okay. So you asked out of the plea agreement before
25 you saw the PSR?

1 A Yes, sir.

2 MR. BOWMAN: That was it, Judge.

3 THE COURT: Anything else, Mr. Bowman?

4 MR. BOWMAN: No, Your Honor.

5 THE COURT: Mr. Dishner, I just have a few
6 questions.

7 FURTHER EXAMINATION BY THE COURT

8 Q The Rule says that before you can withdraw a guilty
9 plea, there must be a fair and just reason for that. So I
10 am going to start where Mr. Fabus started.

11 What is your reason for wanting to withdraw your guilty
12 plea?

13 A My reason, sir, is that the day of the Court hearing, I
14 admit that I agreed and you spoke with me and you was very
15 clear about me going to trial. I feel like it was a hasty
16 decision due to me and him arguing the short time that I had
17 to go to trial.

18 That is about, you know, as close to how he -- how
19 Mr. Leonard -- I feel like really at the time that he --
20 when I come in here for the plea -- he filed the Motion to
21 come off my case, plus he was -- I feel like he was more
22 against me than he was for me.

23 So that's why I felt like I was kind of cornered and I
24 went ahead with the plea. I agreed to things that I
25 normally wouldn't have agreed to. That's how I feel today.

1 Q Tell me specifically what Mr. Leonard did or said to
2 you that lead you to the conclusion that he really wasn't --
3 or that he was against you?

4 A Well, he instead of -- he tried to come off -- he
5 wanted to come off my case due to me wanting to go to trial.
6 And then he explained to you that he felt that --

7 Q What did he say? Did he ever tell you that he would
8 not try your case?

9 A Yes, sir.

10 Q He told you he didn't want to represent you?

11 A He said that he was filing a Motion to come off my case
12 because I wanted to go to trial.

13 Q Why did he say he didn't want to try your case?

14 A He didn't at first, but once we got in here on the
15 Motion that he read to you, I think it said that we either
16 wasn't getting along or that the relationship could not be
17 mended. It was too far gone. Something had happened.

18 Then like I said, he told you that he felt like we was
19 going to put hands on each other the next time we seen each
20 other there. That I was going to lie at my trial. That he
21 didn't want to be a part of that. I mean --

22 Q Here's what he said, Mr. Dishner. And I don't think
23 this gives away any confidences at all, but he said, "I
24 certainly have no problem continuing to represent him. The
25 real problem that I would have is if he decided to go to

1 trial and his plan was to take the witness stand. That's
2 where I don't want to get into that issue in my Motion to
3 Withdraw." That is what he said to me. He never said that
4 you intended to lie at trial; did he?

5 A No, but I think if you read on through there, I think
6 that is how you insinuated it because --

7 Q No. Here's what I told you. I cut Mr. Leonard off. I
8 wasn't even going to ask him about that. What I said to
9 you, "Mr. Dishner, Mr. Leonard has an ethical obligation not
10 to participate in testimony at trial that he knows to be
11 false. I don't know whether that's what's going on here or
12 not. I'm not going to speculate much about that."

13 "But all he can do at trial, if you were going to take
14 the witness stand and testify falsely and he knew that, is
15 simply to basically ask your name, and ask you what you want
16 to tell the Court."

17 He can't participate in it any further. That is what
18 it said; wasn't it?

19 A Yes, sir.

20 Q And you interpreted that to mean that Mr. Leonard was
21 accusing you of planning to take the witness stand and lie?

22 A Well, that's how I took it.

23 Q Before we even got to that point though, I asked you
24 about your meeting or your contact with Mr. Leonard on the
25 prior Friday where you had indicated to him that you wished

1 to have a trial; correct?

2 And you said to me, "At the time he came and spoke with
3 me, I was explaining to him that I was having problems with
4 the plea agreement, but over the weekend, I went over the
5 plea agreement over and over."

6 "I talked about it with my family, and if I can, I was
7 going to go ahead and take the plea agreement today since it
8 was already signed."

9 And you and I had some more conversation about that,
10 and you made that statement about simply getting it over
11 with. And I told you I wouldn't in all likelihood accept a
12 plea for you just get it over with; right?

13 A Yes, sir.

14 Q And here is what you said to me, "I mean that I'm
15 satisfied with the plea agreement, and I am satisfied with
16 what my lawyer has done, so I think it would be in my best
17 interest to go ahead and plead here today."

18 A Yes, sir.

19 Q Now was it true that you were satisfied at that time
20 with the plea agreement?

21 A I don't believe that I admitted that I was satisfied
22 with it until later on.

23 Q That is not my question.

24 A Yes, sir.

25 Q Was it true that you were satisfied with the plea

1 agreement? You are shaking your head, yes.

2 A Yes, sir. I guess.

3 Q Is it true that at that time you were satisfied with
4 what your lawyer had done?

5 A I don't know if I was satisfied with what my lawyer had
6 done.

7 Q Was it --

8 A I did tell you that I was. I think just to get it over
9 with.

10 Q Was it true that you said that it would be in your best
11 interest to go ahead with the plea agreement?

12 A Yes, sir.

13 Q All right. And if it was in your best interest at that
14 time, why is it not in your best interest now?

15 A I don't know if it is in my best interest in lieu
16 of -- with the plea bargain, due to how things laid out
17 with Mr. Leonard.

18 Q I'm sorry?

19 A Due to how things laid with me and Mr. Leonard. Him
20 wanting to come off my case, because I wanted to go to
21 trial, some of the things he said, but that's --

22 Q Isn't it true that in November, Mr. Leonard was
23 practically ready to go to trial?

24 A Sir, I don't think he was or he wouldn't have filed the
25 Motion that he filed. He filed the Motion two days before

1 my hearing to come off my case.

2 Q You were aware, were you not, that an investigator had
3 been hired by Mr. Leonard after Court approval?

4 A Yes, sir.

5 Q You said to either Mr. Bowman or Mr. Fabus that that
6 investigator talked to you on one occasion?

7 A One occasion, yes, sir.

8 Q And you are aware, aren't you, that Mr. Leonard
9 represented to the Court that the investigator had been
10 working on the case for a while, and he hadn't been able to
11 find anything that would help you at trial; correct?

12 A Yes, sir. That's what he said.

13 Q You have some reason to question that?

14 A No, sir. What I seen with Mr. Bowman, I think, was his
15 name -- he found more that -- I think he found something
16 that was more against me than for me.

17 Q So he found things that would actually hurt you at
18 trial; is that what --

19 A I think that's what he said, yes, sir.

20 Q Mr. Leonard clearly advised you to accept this plea
21 agreement.

22 A He said it was in my best -- he felt that I should take
23 it.

24 Q And he told you that if you went to trial and were
25 convicted on all these charges, you could get a life

1 sentence; correct?

2 A Yes, sir.

3 Q You wouldn't want a lawyer to tell you anything other
4 than the truth; would you?

5 A No.

6 Q You have said today that you always wanted a trial in
7 this case; correct?

8 A Other than the time that he brought the plea bargain to
9 me and within that hour I signed it. That was about the
10 November the 17th at trial, I agreed with you.

11 Q And I'm puzzled why you think a plea agreement that
12 results in a 188 to 235 month guideline range -- of course
13 that might not be the ultimate range. I know you can make
14 objections to the report, and you said some things in the
15 report you thought were incorrect.

16 But, let's assume for a minute that that's a 188 to 235
17 month guideline range. I tend to agree with Mr. Leonard
18 that if you took the case to trial and you lost, you are
19 probably looking at something closer to life, if not life.

20 Those are the kinds of things that have to be taken
21 into account in deciding whether to plea or not. Do you
22 understand that?

23 A Yes, sir.

24 Q Those are things you took into account and then
25 Mr. Leonard advised you to think about it; correct?

1 A Yes, sir.

2 Q And if you had taken this case to trial, just tell me,
3 generally, what your defense would have been?

4 A Some of the statements, some of the drug quantities
5 doesn't match.

6 Q But how would you have proven that?

7 A Well, the only way I could have proved it was to show
8 that what -- the time I was home, the 38 days I was at the
9 halfway house for two weeks of that, and everybody knows I
10 wasn't selling keys of dope in a halfway house.

11 Q Everybody knows that?

12 A Everybody knows that I wouldn't have been doing no such
13 thing. That's my -- I agreed to this weight on this
14 distribution.

15 I feel like I made a hasty decision when I wanted to go
16 to trial because I am not guilty of it. I have always pled
17 to my charges.

18 My whole life I've never took nothing at trial. I have
19 never fought it. I have always said, "Yeah, I am guilty."
20 And I've gone to prison and I went. I spent every day --
21 day for day. I never took no paroles. This here I am not
22 guilty of.

23 Q Now you are willing to say you are not guilty of this?

24 A I am guilty of some of it. But I am not guilty of
25 what's being said. That's how I feel, you know, of what

1 went before the plea bargain. The plea bargain, that is
2 what I meant.

3 Q You had almost a month to think about this plea
4 agreement after you signed it; right?

5 A Yes, sir. I talked to him maybe two and a half weeks
6 later.

7 Q And during that time you talked to your family?

8 A Yes, sir.

9 Q And your family thought it was in your best interest;
10 right?

11 A Well, I said that just to -- I did say it, just to get
12 it over with.

13 Q Is that what they thought?

14 A No. Because my family knows that I wasn't involved in
15 what is being said.

16 Q You also told me that during that period of time you
17 have been listening to and taking the advice of a jailhouse
18 lawyer; right?

19 A Yes, sir. I did. He was more -- some of the case laws
20 I was looking at and I got off track. I was looking at the
21 wrong -- at some wrong cases and it didn't really pertain to
22 mine, and we got that straightened out real quick.

23 Like I said, I can't read and write that good. People
24 have to explain things to me. Sometimes I allow people to
25 tell me some information that I shouldn't go with.

1 Q I think you just answered one of my other questions.
2 This Presentence Report indicates that on 23 different
3 occasions as an adult you have been convicted of a criminal
4 offense. Is that essentially correct?

5 A I think some juvenile offenses --

6 Q Well, there are seven more juvenile, but I am talking
7 about the adult criminal convictions.

8 A Yes, sir.

9 Q It indicates there is another 12 or 13 that were
10 dismissed for one reason or another.

11 A I think so, sir.

12 Q So since you were 18-years-old you have been charged
13 with a criminal offense on -- what's that make, 35 or so
14 occasions?

15 A Probably so.

16 Q That's a lot of experience with the Criminal Justice
17 System; right?

18 A I guess.

19 Q And you said that every time there was a conviction
20 here you plead guilty -- in other words, you have never
21 taken a case to trial; right?

22 A Yes, sir. I have always -- if I was guilty of it, I
23 would plead to it and went on to prison. I never not once
24 wanted to go to trial because I was guilty of driving. I
25 was guilty of the theft over a thousand. I was guilty for

1 not appearing in Court.

2 Q Well, it is not just that. Mr. Bowman is right about
3 that, there is 23 of them.

4 A Yeah, I think it's DUI's, one misdemeanor assault,
5 DUI's, failure to appear in Court, theft over a thousand.

6 Q Multiple ones.

7 A Two thefts over a thousand, three DUI's, failures, and
8 two failure to appear, or failure to appears. I have had
9 some misdemeanor and some juvenile time.

10 Q I am having a hard time hearing you, Mr. Dishner.
11 Speak up.

12 A I've had some misdemeanors and juvenile offenses
13 whenever I was a kid. I come from a broken home. I took
14 alcohol to try to deal with my depression. That is what it
15 lead to, my criminal history.

16 Q The point is you have spent a lot of time in a
17 Courtroom; haven't you?

18 A Yes, sir. Yes, I have.

19 Q How old are you now?

20 A I'm 36.

21 Q So you've averaged more than one criminal conviction a
22 year since you were 18-years-old; correct?

23 A Yes, sir.

24 Q How much time in the last 18 years have you spent in
25 prison or in jail?

1 A Out of the last 18 years, I have probably spent the
2 past 15.

3 Q More than 15 years of it?

4 A Out of the 18 years, I have probably spent from the
5 time I was 18, I've spent until I was 30 -- 32 --

6 Q I'm sorry. I didn't follow you.

7 A From the time I was 18-years-old or 19, I went into
8 prison for theft of property and failure to appear in Court.
9 And then DUI, then failure to appear in Court, that's what I
10 went to prison for.

11 Q My question is -- how much of the last 18 years have
12 you spent in prison or in a local jail?

13 A Probably the past 12 or 13 years.

14 Q So about two-thirds of it?

15 A Two-thirds of it, yes, sir.

16 Q Mr. Dishner, if I allow you to withdraw this guilty
17 plea and you go to trial, and you get convicted, and you end
18 up with a non-parolable life sentence, are you going to be
19 content with that result?

20 A Yes, sir.

21 Q I don't believe anybody would be content with a life
22 sentence, Mr. Dishner.

23 A I don't feel like I'd get a life sentence. I feel like
24 the evidence will show that I'm not guilty of what they're
25 saying.

1 Q Here's the problem. You know I defended cases for a
2 long time, Mr. Dishner. When the jury hears about those
3 statements that the officers say you made to them, more
4 likely than not they will believe those statements.

5 And based on those statements alone, they could convict
6 you of everything that you have been charged with here. If
7 you are convicted of everything you have been charged with
8 here, the guideline range is likely going to come out at
9 life.

10 A Yes, sir.

11 Q And that is the kind of thing that Mr. Leonard wanted
12 you to take into consideration. But you are telling me you
13 want to take that risk?

14 A Yes, sir.

15 Q All right.

16 THE COURT: Anything else from Mr. Dishner?

17 All right. Mr. Dishner, you can go back to the
18 table beside Mr. Fabus.

19 (The witness left the stand.)

20 Is that your only witness, Mr. Fabus?

21 MR. FABUS: Yes, Your Honor.

22 THE COURT: All right. I will be glad to hear
23 your argument on the Motion.

24 Well, I didn't ask Mr. Bowman. Any proof from the
25 Government?

1 MR. BOWMAN: I was going to offer some brief
2 proof, Your Honor.

3 THE COURT: All right. I'm sorry. Go ahead.

4 MR. BOWMAN: Quite frankly, I don't think the
5 Defense met its burden, but out of an abundance of caution I
6 wanted to --

7 THE COURT: All right. Go ahead.

8 MR. BOWMAN: I will call Agent Shannon Russell and
9 I will try to keep this brief.

10 THE COURTROOM DEPUTY: Do you solemnly swear the
11 information you are about to give in the case before the
12 Court will be the truth, the whole truth, so help you God?

13 MR. RUSSELL: I do.

14 THE COURTROOM DEPUTY: Please be seated.

15 SHANNON RUSSELL,
16 the next witness, having been duly sworn,
17 was called on behalf of the Plaintiff,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BOWMAN:

21 Q Will you state your name for the record, please?

22 A Shannon Russell.

23 Q Where are you employed?

24 A The Second Judicial Drug Task Force. I am also -- I am
25 employed with the Sullivan County Sheriff's office.

1 Q Okay. How long have you been with the Drug Task Force?

2 A Since 2014 -- November of 2014.

3 Q How long have you been in law enforcement?

4 A I started working for Santa Barbara, California in '96.

5 Q Okay. So prior to that you were in active military
6 service?

7 A Yes.

8 Q Now, as part of your training for the Drug Task Force
9 have you been trained in and also been involved in numerous
10 interviews of potential targets of your investigations?

11 A Yes, I have.

12 Q And part of that training is learning how to ask
13 questions, to follow up questions to determine whether or
14 not a person is being truthful with you?

15 A That is correct.

16 Q You also observe their body language and use that to
17 interpret whether someone is being truthful with you in
18 giving a statement?

19 A Yes.

20 Q Okay. Now, you have heard some discussion about a
21 July 13, 2016, statement by Mr. Dishner?

22 A Yes.

23 Q Were you present for that?

24 A Yes.

25 Q Who else was present for that?

1 A Agent Rourke -- Jason Rourke, and ATF Agent Jamie
2 Jenkins.

3 Q Okay. Now, Agent Rourke is also with the Drug Task
4 Force?

5 A That is correct.

6 Q And then Agent Jenkins, of course, which you indicated
7 was with the ATF.

8 A Correct.

9 Q Now, when you interviewed Mr. Dishner, where was that
10 interview located?

11 A The Sullivan County Sheriff's Office.

12 Q Was that following his arrest then that we've discussed
13 where he was pulled over in a vehicle with a firearm?

14 A That is correct.

15 Q Okay. Now, Agent Russell, did the Defendant,
16 Mr. Dishner, receive any Miranda warning?

17 A He was.

18 Q Was that prior to you questioning him?

19 A Yes.

20 Q Was that a written Miranda warning?

21 A It is a printed form that we read, initial -- what we
22 do is we take the information, his name, provide the
23 address, phone number, date, and time, and then we read the
24 form to him verbatim.

25 Then we explain to him that we need his initials beside

1 each one if he understands his rights, which he advised he
2 did. And he doesn't have to speak to us. He can stop. We
3 also explained that he can stop the interview at any time.
4 Then we have him sign the form.

5 Q Is that the protocol that you use in every interview
6 that you do of a target of an investigation?

7 A That's correct.

8 Q Now, on this occasion did Mr. Dishner go through and
9 initial that form as you have indicated?

10 A That's correct.

11 Q And he signed that waiver form as well?

12 A Yes.

13 Q Okay. Do you recall specifically who read the form to
14 him?

15 A Typically, I do, because I am the one writing the form.
16 So I would assume it was me.

17 Q Okay. So in these interviews typically if you are with
18 Agents Rourke and Jenkins are you typically the note taker?

19 A Usually, yes.

20 Q Okay. In fact, the written or typed summary of the
21 interview, did you actually prepare that as well?

22 A I did.

23 Q And Agent Russell, did you ask Mr. Dishner for his
24 address?

25 A Correct.

1 Q Did you write that down on the Miranda waiver form?

2 A I did.

3 Q Did you ask him to sign that form?

4 A Yes.

5 Q Did he sign that form?

6 A He did.

7 Q Did you note anything about the address that he
8 provided on that Miranda form?

9 A At the time, I honestly didn't pay attention to it. It
10 wasn't until I was preparing to come up here I happened to
11 notice the address was not one that I was familiar with him,
12 that was in his history.

13 So today I just looked at it, I put it in CRMS -- which
14 is the Tennessee law enforcement portal. I typed that
15 address in and it came up to -- associated with a Virginia
16 Hammonds.

17 In looking on Facebook, I just happened to see that it
18 appeared that she was his girlfriend and she had that
19 address listed as her address at one time. And then there
20 was some entries made on Facebook that made it appear that
21 they were still maybe together.

22 Q And that's the address he provided to you for a
23 residence?

24 A That is correct.

25 Q Now, when you began interviewing Mr. Dishner about his

1 involvement in this methamphetamine conspiracy, did he
2 provide you information that you were already aware of?

3 A That's correct.

4 Q Okay. And just in general, what types of information
5 did he provide you that had been corroborated by other
6 investigations that you had performed?

7 A The names, specifically, Steven Hilliard, Timothy
8 Green, Tracy Arnold, Quinton Hatcher, Brian Danner, then
9 there was another. I think Mark was listed, but I am not
10 sure if he was talking about Mark Morrison at the time.

11 Q Those were names that you also uncovered in doing a
12 search of the Defendant's phone that he had with him at the
13 time he was arrested?

14 A I did not actually do the physical search of the phone.

15 Q Okay.

16 A But I believe it was discovered later, yes.

17 Q Now, what in particular about the involvement of those
18 individuals that he mentioned was consistent with your
19 investigation?

20 A The fact that he had met or had spoken with Steven
21 Hilliard. Steven Hilliard was arrested in April of 2016 in
22 Georgia, brought back to Sullivan County on a warrant.

23 So we know that he was in jail in April at a time the
24 Defendant was released, Mr. Dishner. So we surmised that
25 they had had some opportunity to talk. He had said that he

1 had gotten the information from Steven Hilliard how to
2 contact Timothy Green.

3 He says that he had contacted Timothy Green but was
4 unable to get him to return his calls. In doing so, he was
5 out with some female -- I don't recall her name or if he
6 even mentioned it. He was -- the person selling the dope to
7 them was -- or that girl -- was selling it to the girl --
8 was Tracy Arnold.

9 So in talking with Tracy Arnold, he had somehow
10 discovered that Tracy Arnold was working with Tim Green.
11 And he had basically made Tim Green -- made Tracy Arnold
12 take him to Tim Green; which upset Green a lot according to
13 him. At that point they, I guess, they continued their
14 involvement with one another.

15 Q The address that is contained in your case statement
16 about Timothy Green's residence, 234 West Carters Valley
17 Road; is that an address that Mr. Dishner provided to you?

18 A I don't think he provided the physical address. He
19 provided the description which matched that address at 234
20 West Carters Valley Road.

21 Q Okay. And did he describe in particular some
22 methamphetamine that he had seen at Timothy Green's
23 residence shortly before his arrest?

24 A He advised that he had helped Timothy Green offload
25 some methamphetamine. He gave an approximate amount -- I

1 can't remember -- I think it was six to ten kilos. And in
2 doing so -- we had just served a search warrant on the 29th
3 of June at Timothy Green's residence along with Joseph
4 Trantum, who lived in the upper end of the County in Hickory
5 Tree.

6 Myself and Agent Rourke had offered those search
7 warrants based on a traffic stop conducted by THP on Highway
8 11W, and a supplier of methamphetamine from Georgia had
9 brought methamphetamine to them and was on the way back and
10 had a large amount of cash.

11 Q And that was Nathan Hogan?

12 A That was Nathan Hogan and Misty Borders.

13 Q Okay.

14 A So we had already targeted or were looking at both
15 Trantum and Green as potential targets and we were going to
16 further our investigation. This kind of jump started
17 things, put it into fast momentum.

18 So we offered the search warrants. We conducted those
19 search warrants on the morning of the 29th of June. In
20 doing those search warrants we discovered a safe in Tim
21 Green's house that had methamphetamine packaged a particular
22 way. It was wrapped in green shrinkwrap. It had numbers
23 written on the outside of them.

24 Q Did the numbers correspond to anything?

25 A They did. In interviewing Mr. Dishner, I asked him to

1 describe how -- he had said that he had helped Tim Green to
2 offload some meth several days prior to the search warrant
3 he had heard about.

4 So I asked him to describe, "In that particular
5 incident, how was the methamphetamine packaged?" And in his
6 statement he described exactly what we had discovered in Tim
7 Greene's residence.

8 I can't say it's the same meth, but it was packaged the
9 same way. Had the numbers written on the outside to include
10 one and five-hundred, I believe, which we believe was the
11 amount that it weighed in kilograms.

12 Q Okay. Now, so when you conducted the search warrant at
13 Tim Green's residence you indicated the methamphetamine that
14 was recovered from a safe was packaged in a green shrinkwrap
15 and it had numbers written on it?

16 A Correct.

17 Q And that's the same type of information or the same
18 information that Mr. Dishner provided to you about meth that
19 he had unloaded --

20 A Yes.

21 Q -- at Timothy Green's residence?

22 A Or at least the same style packaging, yes.

23 Q Okay. Did you tell Mr. Dishner that that's the type of
24 packaging that you had found during the course of the
25 search?

1 A I don't recall that we mentioned -- we are actually
2 kind of surprised that he had said that, and that, for us,
3 was a big ah-ha moment.

4 Q Okay. Is this -- if you will look at the monitor.

5 (Document displayed on the computer screen.)

6 BY MR. BOWMAN:

7 Q Is that your summary of the interview of Mr. Dishner?

8 A Yes. That is Page 1.

9 Q Okay. And then is that Page 2?

10 A That is correct.

11 Q Okay.

12 MR. BOWMAN: Your Honor, I would like to make that
13 an Exhibit to Agent Russell's testimony.

14 THE COURT: All right. Let's mark it as Exhibit
15 No. 1.

16 (Exhibit No. 1 was admitted.)

17 MR. BOWMAN: Thank you. That's all the questions
18 I have.

19 THE COURT: All right. Mr. Fabus?

20 MR. FABUS: I don't have any questions, Judge.

21 THE COURT: All right. Mr. Russell, thank you
22 very much. You may step down.

23 THE WITNESS: Thank you, sir.

24 (The witness left the stand.)

25 THE COURT: Anything else, Mr. Bowman?

1 MR. BOWMAN: No, Your Honor. Thank you.

2 THE COURT: Anything else, Mr. Fabus?

3 MR. FABUS: No, Judge.

4 THE COURT: All right. Now I would be glad to hear
5 your argument.

6 CLOSING ARGUMENT

7 BY MR. FABUS

8 This is a rather unique position for me to be in,
9 Judge, because as Mr. Dishner's attorney, I am doing exactly
10 what he is requesting that I do.

11 And if you were to grant the Motion, it would
12 really concern me that I could be marching him to a life
13 sentence. But, ultimately, that ends up being his decision.
14 That's not my decision.

15 I am not a Guardian Ad Litem like we have in
16 custody cases where I just do what's best for my client. I
17 have to try to explain to him what the options are and some
18 of these decisions ultimately end up being his. Then I just
19 have to advocate to the best of my ability.

20 And reading the Government's Motion, you know I
21 filed my brief and we all hit the exact same points and I
22 can't straight-faced tell you that if you just start
23 counting the different six or seven elements that they've
24 got that there is going to be more on my side than there is
25 going to be on Mr. Bowman's side.

1 This would be a tremendous waste of the
2 Government's resources and your time. Because you already
3 tried this case.

4 Additionally, I am really between a rock and hard
5 place in that I can't really maintain innocence or I am
6 having him perjure himself after he did his change of Plea
7 Hearing. So there are two of them that are going to weigh
8 quite heavily against me in those factors.

9 But I do think there's one of the other factors
10 that weighs in my favor, if not strongly in my favor, Judge.
11 And I think that's the fourth factor.

12 When we just look at the circumstances underlying
13 the entry of the guilty plea. And I would point out when we
14 look at these six or seven factors, the case law says it is
15 a general non-exclusive list and no one factor is
16 controlling.

17 And if we actually read the language of the
18 Federal Rule of Criminal Procedure that governs this, it
19 says that the Rule is designed to allow a hastily entered
20 plea made with unsure heart and confused mind to be undone.

21 Not to allow a Defendant to make a tactical
22 decision to enter a plea, wait several weeks, and then
23 obtain a withdrawal if he believed he made a bad choice in
24 pleading guilty.

25 I don't think that's what happened here at all. I

1 think he was back-and-forth with it all along. I can
2 understand why Mr. Leonard was strongly encouraging him to
3 sign it.

4 Judge, when I first started meeting with
5 Mr. Dishner to be honest, I was taking the same approach
6 and you can see I ended up quickly in the same position
7 Mr. Leonard was in, and then he fired me from the case a
8 couple times.

9 when I have just taken the approach that it is his
10 decision and I explained it to him. And I am just going to
11 try to advocate for what he wants me to, we have actually
12 gotten along fine for the last month.

13 when we look at just the unique circumstances of
14 this, it was November the 17th, and I think the trial was
15 like December the 5th, it was less than three weeks out.

16 And he shows up at Court, and Judge you handled it
17 perfectly. I know -- I have seen you before and when
18 somebody is hesitant at all, you re-set them to make them
19 come back. And I remember wondering why you did that,
20 because it almost seemed too cautious.

21 Now I can see why. I have seen you do that
22 before. And that really wasn't an option on this one,
23 because the trial was three weeks out with what we were
24 looking at time frame-wise. It just wasn't realistic to do
25 that, and I think it was the week before Thanksgiving,

1 probably even complicating it further.

2 But, for Mr. Dishner's viewpoint, he shows up that
3 day to Court, and it is in the transcript where Mr. Leonard
4 said, "We may end up in a fistfight." It was that
5 contentious between the two of them.

6 And he hears his attorney say that to the Court.
7 And I know Mr. Leonard did not tell the Court, "well, if he
8 gets on the stand he is going to perjure himself."

9 But when I read it, that was my honest -- I
10 understand how attorneys have to word stuff, but I can see
11 how Mr. Dishner was under the impression that that was being
12 said. Because I think that is how a lot of people -- I
13 think a lot of people would probably read it like that.
14 Even though that wasn't quite what was being said.

15 So just between the way that happened and he had
16 already tried to -- it was just -- this is just a really odd
17 set of circumstances. Where I look at that one factor, and
18 I think it will be in your discretion -- I mean if you rule
19 against me on this I don't think I will have a chance on
20 appeal. Because I think it's going to be in your discretion
21 either way you look at it.

22 He would like to be able to go to trial whether or
23 not that's in his best interest. It is his decision, so I
24 am here advocating for you to allow him to withdraw from
25 it -- from his plea and it would really just be on the basis

1 of that one factor. Because I don't think any of the others
2 -- at best, they are neutral. I don't think the other ones
3 would weigh in my favor.

4 THE COURT: The thing that troubles me about that
5 argument is this, the Rule makes it clear that a Court
6 should not allow a Defendant for tactical reasons to enter a
7 guilty plea and then come back later and say, "I was hasty.
8 I was unsure."

9 And it almost appears to me that that's exactly
10 what Mr. Dishner has done, because for whatever reason he
11 indicated to the Court quite clearly and unequivocally on
12 the 17th of November that he thought it was in his best
13 interest to go forward. And then about a month and a half
14 later he writes a letter saying, "I want to withdraw it."

15 I don't think I get to the prejudice to the
16 Government issue unless the other factors weigh in favor of
17 Mr. Dishner. But to allow a Defendant to do that raises the
18 potential for serious prejudice to the Government doesn't
19 it?

20 I mean these other Defendants who presumably would
21 have testified against him have all been sentenced. They
22 are all --

23 MR. FABUS: I can't argue otherwise, Judge.

24 THE COURT: -- in BOP custody. The Government may
25 or may not be able to get them here for a trial.

1 MR. FABUS: I can't straight-faced argue
2 otherwise. I just -- well, I guess that is how you are
3 saying it was a tactical decision. I guess with how I was
4 looking at it, I didn't see where there was a tactical
5 advantage to us doing that.

6 But just me looking at the proof that the
7 Government had against him, even without other people coming
8 back and testifying, I didn't see where that was going to
9 help me with his statement, with the cell phone, with -- the
10 car was somebody else's car. I think it was stolen. But
11 the drugs and gun that were found in the car. I didn't see
12 where any of that changes any of it.

13 But with what you are saying and that's a good
14 point. I am not going to say it's not.

15 THE COURT: And it is not like he is inexperienced
16 with the Court System. He has been in the Court System a
17 lot. And I realize that was in State Court and this is
18 Federal, but your basic rights are the same in both.

19 So certainly, I think the Government could make a
20 case if it wanted to that this was an experienced criminal
21 who appeared before the Court in November of 2017, who
22 sought a tactical advantage by entering a guilty plea that
23 he later sought to withdraw.

24 And here we are another six months down the road.
25 I mean, I guess that all weighs in on whether or not I can

1 find that this really was a hastily entered into guilty plea
2 or not.

3 I don't remember the exact date he first appeared
4 before the Magistrate Judge. But it was in the first
5 quarter of the year.

6 MR. FABUS: I think it was.

7 THE COURT: So five or six months pass before he
8 ever signs this plea agreement.

9 MR. FABUS: I think that is accurate, yes.

10 THE COURT: And then he's got 30 days to think
11 about it before he actually comes into Court, and he
12 unequivocally tells me that he is satisfied with his lawyer.
13 He thinks the plea agreement is in his best interest. He
14 wants to go forward.

15 He never once said to me, "Oh, I'm concerned that
16 if we go forward -- I've got to go to trial on December" --
17 whatever it was. He has been around the Criminal Justice
18 System enough to know that continuances can be granted.

19 MR. FABUS: The only thing I can point to in the
20 transcript, Judge, was I just saw the two occasions where he
21 was like, "I am just ready to get it over with."

22 And as soon as you heard that the second time,
23 that was when you stopped and at that point on, I guess,
24 from my point of view, all I can offer the Court is just
25 from that point on, he just said what he needed to say to

1 get it over with.

2 But you handled everything well that day. I mean,
3 you couldn't have done it any differently, Judge.

4 THE COURT: And in thinking back on it, other than
5 tell him that if he was dissatisfied with Mr. Leonard, if
6 Mr. Leonard did not want to go to trial, thought the
7 relationship was irretrievably broken, that I would grant
8 him a continuance. But beyond that, I don't know what I
9 could have done more to try to assure that his plea was
10 knowing and voluntary.

11 MR. FABUS: I didn't even try to mention anything
12 in my argument, Judge, or in my briefing. Because I -- and
13 I knew what you were like.

14 That was one of the hiccups I had early on with
15 him because I waited to file the transcript requests.
16 Because I know what you are like during Change of Plea
17 Hearings. Not just from my experience, but from watching
18 others sometimes when we are sitting here in Court. And
19 then I had spoken with Mr. Leonard, and asked if there was
20 anything abnormal about the change of plea. And he had told
21 me that there wasn't.

22 That you how handled it like you always did. That
23 is why I waited a month to even order the transcript. I was
24 trying to save those costs.

25 THE COURT: All right. I interrupted your

1 argument. Go ahead.

2 MR. FABUS: Judge, I have probably said about all
3 I can say. And I hit the same points in the memo that I
4 filed. But I think that is probably about all I can say.

5 THE COURT: All right, Mr. Fabus, thank you.

6 Mr. Bowman?

7 CLOSING ARGUMENT

8 BY MR. BOWMAN

9 Your Honor, I am not going to stand here and
10 belabor the points I have already made in my memorandum.

11 I would like to point out though, that essentially
12 what the defendant posits here today is, he essentially
13 attempted to manipulate the Court, and it would appear that
14 he has continued that.

15 This proposal that he said what was needed to get
16 through this change of plea at that point in time is a
17 manipulation of the Court. That, I think, does not ring
18 true, however, when we look at the circumstances.

19 Mr. Fabus aptly points to the fourth factor as
20 being important in this particular situation. That being
21 the circumstances underlying the entry of the plea of
22 guilty, which the Defendant certainly focused on in his
23 testimony.

24 And the reality is that we have a Defendant, as
25 this Court just indicated, that is very familiar with the

1 Judicial System. And he's not timid. He is somebody who
2 has sent multiple letters to the Court raising concerns.
3 And those concerns were addressed by the Court on each and
4 every occasion.

5 So he has demonstrated he's not afraid to say,
6 "Hey, wait," when he's got a concern about the System. He
7 is not somebody that is timid and is going to just take his
8 lawyer's advice wholesale.

9 No, he talked to his jailhouse lawyer. He talked
10 to his bunk mate. He has talked to his family. He didn't
11 take anything as wholesale. In fact, they apparently had
12 very heated arguments.

13 Yet he expects the Court to believe that he came
14 here under oath and manipulated the Court into taking his
15 plea that day, November the 17th of 2017, because he just
16 wanted to get it over with. Because he was somehow
17 confused, or scared, or what have you. And that just
18 doesn't ring true based upon the experience of this
19 Defendant.

20 In contrast, I think his initial appearance before
21 Judge Corker was around March of 2017. He was writ'ed in.
22 And of course, and I am sure the record bares this out.
23 Judge corker advised him of the maximum penalty he was
24 facing. I am sure Judge Corker advised him the significance
25 of the gun charge, and how that would be a consecutive

1 sentence.

2 So he was well aware of the penalties. And, Your
3 Honor, Dave Leonard is no stranger to this Court. I've had
4 probably more cases with David Leonard than anyone other
5 than the Federal Defender Services in this Court. He has
6 probably tried as many cases before this Court as any other
7 panel attorney.

8 Clearly, very experienced and I'm sure would have
9 advised Mr. Dishner about the penalties that he was facing.
10 would have advised him properly about the risk of going to
11 trial without any sugarcoating of it.

12 And the Defendant then appears before the Court
13 with all of that behind him and having previously requested
14 that Mr. Leonard be removed from his case.

15 Citing at one point to the failure to file
16 Motions, even though I think the record will bare out that
17 David Leonard filed more Motions than any other attorney.
18 In fact, I can't specifically recall, other than some just
19 boilerplate Motions, anybody else having filed any Motions
20 of any significance of this case.

21 That Motion ultimately is ruled moot by Judge
22 Corker because the Defendant got before Judge Corker and
23 decided -- not as the Defendant indicated on the witness
24 stand that essentially Judge Corker told him, "You've got
25 the best lawyer. You need to learn to get along."

1 But the Defendant had indicated that he was able
2 to get along the Defendant -- the Defendant had indicated
3 that he was able to get along with Mr. Leonard and was
4 satisfied with his representation.

5 Those are rather cursory actions in that -- that
6 is a routine thing for Judge Corker to deal with. A request
7 for a new attorney numerous times are baseless. Most of
8 them are probably baseless, but often those are granted.
9 There would have been a good reason not to grant this one.

10 And then, obviously, and I'm not privy to the
11 hearing between the Court with Mr. Leonard and the Defendant
12 prior to the change of plea, other than what I have heard
13 the Court recite today, and what I saw recited in the
14 Defendant's memorandum.

15 But it's clear from that that the Court was very
16 thorough when questioning the Defendant about Mr. Leonard's
17 representation and had there been any real concern about
18 that representation, the Court would not have gone forward
19 that day.

20 You went beyond your typical plea colloquy.
21 Multiple times you asked the Defendant about the certainty
22 with which he was entering this plea. You made extra
23 efforts and you always go through a very thorough colloquy.
24 But on this occasion you made even more efforts to make sure
25 that the plea was knowing and voluntary.

1 He agreed, of course, that the plea agreement and
2 factual basis were accurate. He initialed each and every
3 page of the plea agreement. And that plea agreement was the
4 second plea agreement that he had received. There had been
5 a negotiation process.

6 He had first received the plea agreement in
7 July of 2017. Mr. Leonard had requested changes to that.
8 And I think that the Court would likely know, particularly
9 based on the statement that he made to three Agents, that
10 the plea agreement that the United States offered the
11 Defendant was exceedingly fair. And that the United States
12 exercised the discretion to be exceedingly fair with regards
13 to Mr. Dishner's plea.

14 Never the less, given the tenor -- given the fact
15 that he had on multiple occasions apparently had these
16 arguments, these disagreements with Mr. Leonard; I was
17 preparing to go to trial. I assumed that we would likely go
18 to trial in this case until after that plea was ultimately
19 entered on November the 17th.

20 And certainly this was not one of those occasions
21 where a plea agreement is signed and one simply can sit back
22 and coast with the expectation that there won't be a trial.
23 We were already getting ready for the trial of Mr. Potter.
24 There would have been a lot of overlapping evidence in this
25 case had we gone ahead with the trial.

1 Certainly, I know the Court is -- you have heard
2 the testimony here today and would have recognized many of
3 the names, would have recognized a lot of scenarios from the
4 Potter trial because they overlap.

5 And so you have a situation were the Defendant has
6 avoided a 60 month minimum mandatory consecutive. He has
7 avoided a much higher quantity of methamphetamine that he
8 admitted to Agents. I'm sure that's -- apparently that's
9 his contention that that's not an accurate amount.

10 The simple fact is you had three Federal -- you
11 had one Federal Agent, two Drug Task Force Agents that would
12 have been prepared to testify to the truthful -- or to the
13 count that the Defendant related to them about these
14 quantities.

15 And those quantities are corroborated by what they
16 found in Tim Green's residence, by what they found in Joe
17 Trantum's residence, by the testimony of Nathan Hogan, who
18 testified in Mr. Potter's trial about the kilograms of
19 methamphetamine that was coming into East Tennessee. And he
20 was providing to Mr. Dishner, and Mr. Green, and Trantum, and
21 Stevie Hilliard, and all these other individuals in East
22 Tennessee.

23 So I think there is every expectation to believe
24 that there would have been a finding of guilt by a jury.
25 And I think looking at all this background, I think it makes

1 it clear that even the fourth factor does not weigh in the
2 Defendant's favor in this case.

3 I am not going to go back through all the other
4 factors. I have covered them all in my memorandum. I think
5 they all weigh in favor of the United States. And that the
6 Defendant should not be permitted to withdraw his guilty
7 plea in this case.

8 But I am happy to answer any questions that the
9 Court may have.

10 THE COURT: The only one I have is this,
11 Mr. Bowman. As I said a few minutes ago, I think the case
12 law indicates that I never get to the issue of prejudice to
13 the Government --

14 MR. BOWMAN: Correct.

15 THE COURT: -- unless I find that the other
16 factors weigh in favor of allowing the withdrawal of the
17 plea. Talk to me a bit about prejudice to the Government.
18 Is Mr. Potter the only Defendant left to be sentenced?

19 MR. BOWMAN: That is what I was about to say,
20 Judge. I believe Mr. Potter and Mr. Dishner are the only
21 Defendants that have not yet been sentenced in this case.

22 The vast majority of the Defendants in this case
23 were in a position to testify. Certainly, those who would
24 have provided information about the Defendant would have
25 been numerous.

1 The fact is that once somebody testifies -- excuse
2 me -- or once somebody has been sentenced their incentive --
3 even though there's that potential for a Rule 35 Motion --
4 their incentive to testify once the case has been sentenced
5 and it is over and behind them, I think goes down
6 dramatically.

7 We are talking about an extensive loss of time
8 here. You will recall that during testimony of -- I believe
9 Ms. Borders, and at least one or two other witnesses --
10 there were some memory issues at trial. There were some
11 issues about it, because quite frankly so much time had
12 passed by.

13 I mean we are talking about two years almost since
14 this Defendant was arrested initially. We are talking about
15 as much as three years and more since this conspiracy began.

16 Many of these Defendants have already been
17 imprisoned for a year to two years at this point. Memories
18 fade.

19 And as I indicated before, there would have been
20 tremendous overlap in the testimony and the witnesses called
21 for the trial of Mr. Dishner and Mr. Potter.

22 There was that common thread here. Common threads
23 of Nathan Hogan, Timothy Green, Steven Hilliard, and there's
24 so many commonalities here that certainly there would have
25 been a lot of overlap. And so, I think, that the detriment

1 to the United States is significant just from a witness
2 standpoint.

3 You also look at: The time to prepare for trial;
4 the time and expensive of flying witnesses in; of vouchers;
5 the Court's time; calling another jury in; and all that, I
6 think you are looking at a tremendous expense to the United
7 States, the taxpayer as a result, if this plea were to be
8 set aside.

9 THE COURT: And I understand that you have to
10 cover all the bases. I guess 35 years or so ago when I
11 started practicing law, I can envision a case like this, the
12 prosecutor calling the law enforcement officers to testify
13 about those statements and then daring the Defendant to
14 testify.

15 I mean, a three-time convicted felon with other
16 misdemeanor convictions involving dishonesty. But I
17 understand.

18 MR. BOWMAN: I would have had real heartburn about
19 this case going to trial. There is -- and I don't recall
20 the author -- it was an attorney. It was an Attorney
21 General, I think back in the 1920's that authored, I
22 believe it was a speech to US Attorney's.

23 It's not frequently enough cited. But it talks
24 about the great power that a prosecutor wields and the need
25 to exercise discretion and exercise justice.

1 And I take that seriously, Judge, and in making
2 and entering into plea agreements, I take that seriously.
3 There is the one side, and there is a great cost going to
4 trial. There is a great cost to the taxpayer. There is a
5 great cost to the Defendant. There is a great cost to the
6 witnesses. That all has to be factored in.

7 THE COURT: I'm not sure who the person is you
8 have in mind. Attorney General Jackson back in the early
9 30s's, I think it was, made such a speech.

10 MR. BOWMAN: That may be it, Judge.

11 THE COURT: He, of course, later went on to the
12 Supreme Court. But, anyway.

13 All right, Mr. Bowman, thank you.

14 Anything else, Mr. Fabus?

15 MR. FABUS: No, Your Honor.

16 THE COURT: All right, gentleman, obviously I am
17 going to take this matter under advisement, and I will issue
18 a written opinion here.

19 You know I have had to deal with these things
20 numerous times over the years and when I think about them
21 one case always comes to mind, and it was not my case.

22 It was a case early on in my career where a
23 Defendant entered a guilty plea. Then became dissatisfied
24 with his lawyer, hired a new one, ultimately convinced the
25 Judge to allow him to withdraw from that plea agreement

1 under which he would have received 20 years or less. He
2 ended up with a mandatory life sentence, and he was a young
3 man.

4 The list that is identified in the case law is a
5 non-exclusive list, but I doubt if it is an appropriate
6 matter for me to consider the best interests of the
7 Defendant.

8 I suppose that is best left to a higher power who
9 is said to look after fools and drunks.

10 The easiest thing for me to do, Mr. Dishner, is
11 grant your Motion, and set this case for trial. But I share
12 the same fear, frankly, that Mr. Fabus fears, and that is
13 that you are marching down the road to a non-parolable life
14 sentence.

15 Mr. Fabus, you are CJ appointed, so would you
16 order the transcript of today's hearing for me. And I have
17 read through as we have been doing this today the
18 transcript, the sealed portion of the transcript, from
19 November the 17th. I am not sure there is anything in that
20 that divulges defense strategy or is privileged information,
21 but would you please review that with Mr. Dishner.

22 Let me know, say within ten days -- that is
23 probably going to end up on a weekend -- let's say a week
24 from next Monday, whether or not there is any objection by
25 Mr. Dishner to the unsealing of that portion of the

1 transcript.

2 If there is none, just file it with a simple
3 statement that says that there is no objection to it.
4 Otherwise, tell me in a sealed filing what the objections
5 are.

6 Does anybody foresee the need for a potential
7 additional briefing after those transcripts are either
8 unsealed or filed?

9 MR. BOWMAN: I do not, Your Honor.

10 MR. FABUS: I don't either, Judge.

11 THE COURT: All right. Once the transcript from
12 today's hearing is filed, I will go forward with a decision
13 on the Motion.

14 And Mr. Dishner, we will get that to you as
15 quickly as possible. If you are not going to be permitted
16 to withdraw your guilty plea we need to move on to
17 sentencing as quickly as possible.

18 If you are, we need to set the case for trial as
19 quickly as we can. All right. Thank you all very much.
20 Let's adjourn for the day.

21 THE COURTROOM DEPUTY: All rise. This Honorable
22 Court now stands adjourned.

23 (End of proceedings.)
24
25

1 REPORTER'S CERTIFICATION

2 STATE OF TENNESSEE)

3 COUNTY OF KNOX)

4 I, Jill M. Waggoner Zobel, LCR #692, CVR, Court
5 Reporter and Notary Public, in and for the State of
6 Tennessee, do hereby certify that the above Proceeding was
7 reported verbatim through the use of the voice-writing
8 method and thereafter transcribed by me, and that the
9 foregoing 105 pages of the transcript is a true and accurate
10 record to the best of my knowledge, skills and ability.

11 I further certify that I am neither kin nor of
12 counsel to any of the parties, nor in any way financially
13 interested in the outcome of this case.

14 I further certify that I am duly licensed by the
15 Tennessee Board of Court Reporting as a Licensed Court
16 Reporter as evidenced by the LCR number and expiration date
17 following my name below.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 and affixed my seal this 15th day of June, 2018.



22 *Jill M. Waggoner Zobel*
23 Jill M. Waggoner Zobel, LCR #692
24 Expiration Date 6/30/20
25 N.P. Commission Expires: 8/22/19
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